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COMPILATION OF SELECTED ACTS WITHIN
THE JURISDICTION OF THE COMMITTEE
ON INTERSTATE AND FOREIGN
COMMERCE

APR 1978

VOLUME IV

CONSUMER PROTECTION LAW
INCLUDING

FEDERAL HAZARDOUS SUBSTANCES ACT
FAIR PACKAGING AND LABELING ACT
POISON PREVENTION PACKAGING ACT
FLAMMABLE FABRICS ACT
CONSUMER PRODUCT SAFETY ACT
FEDERAL CAUSTIC POISON ACT
MAGNUSON-MOSS WARRANTY—FEDERAL TRADE COMMISSION
IMPROVEMENT ACT
FEDERAL TRADE COMMISSION ACT
MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT
NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF
1966
REFRIGERATOR SAFETY ACT

PREPARED FOR THE USE OF THE
HOUSE COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE



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Printed for the use of the
House Committee on Interstate and Foreign Commerce



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C O N T E N T S

(The same table of contents appears in volumes I, II, III, and IV)

VOLUME I—HEALTH LAW

	Section	Page
Public Health Service Act:		
Title I—Short Title and Definitions-----	1	3
Title II—Administration-----	201	5
Title III—General Powers and Duties of Public Health Service:		
Part A—Research and Investigation-----	301	34
Part B—Federal-State Cooperation-----	311	49
Part C—Hospitals, Medical Examinations, and Medical Care-----	321	81
Part D—Lepers-----	331	104
Part E—Narcotic Addicts and Other Drug Abusers-----	341	105
Part F—Licensing—Biological Products and Clinical Laboratories and Control of Radiation-----	351	112
Part G—Quarantine and Inspection-----	361	135
Part H—Grants to Alaska for Mental Health-----	371	114
Part I—National Library of Medicine-----	381	142
Part J—Assistance to Medical Libraries-----	390	145
Part K—Quality Assurance-----	399A	152
Title IV—National Research Institutes:		
Part A—National Cancer Institute-----	401	153
Part B—National Heart, Lung, and Blood Institute-----	411	163
Part C—National Institute of Dental Research-----	421	174
Part D—National Institute on Arthritis, Rheumatism, and Metabolic Diseases, National Institute of Neurological Diseases and Stroke, and Other Institutes-----	431	176
Part E—Institutes of Child Health and Human Development and of General Medical Sciences-----	441	191
Part F—National Eye Institute-----	451	193
Part G—National Institute of Mental Health-----	455	194
Part H—National Institute on Aging-----	461	194
Part I—General Provisions-----	471	196
Title V—Miscellaneous-----	501	204
Title VI—Assistance for Construction and Modernization of Hospitals and Other Medical Facilities:		
Declaration of Purpose-----	600	209
Part A—Grants and Loans for Construction and Modernization of Hospitals and Other Medical Facilities-----	601	209
Part B—Loan Guarantees and Loans for Modernization and Construction of Hospitals and Other Medical Facilities-----	621	224
Part C—Construction or Modernization of Emergency Rooms-----	631	231
Part D—General-----	641	232
Title VII—Health Research and Teaching Facilities and Training of Professional Health Personnel:		
Part A—General Provisions-----	700	241
Part B—Grants and Loan Guarantees and Interest Subsidies for Construction of Teaching Facilities for Medical, Dental, and Other Health Personnel-----	720	250
Part C—Student Assistance-----	727	262

Public Health Service Act—Continued

	Section	Page
Title VII—Health Research and Teaching Facilities and Training of Professional Health Personnel—Continued		
Part D—Grants To Provide Professional and Technical Training in the Field of Family Medicine-----	761	295
Part E—Grants To Improve the Quality of Schools of Medicine, Osteopathy, Dentistry, Public Health, Veterinary Medicine, Optometry, Pharmacy, and Podiatry-----	770	305
Part F—Grants and Contracts for Programs and Projects-----	780	320
Part G—Programs for Personnel in Health Administration and in Allied Health-----	791	336
Title VIII—Nurse Training:		
Part A—Assistance for Expansion and Improvement of Nurse Training-----	801	345
Part B—Assistance to Nursing Students-----	830	360
Part C—General-----	851	370
Title IX—Education, Research, Training, and Demonstrations in the Fields of Heart Disease, Cancer, Stroke, Kidney Disease, and Other Related Diseases-----	900	375
Title X—Population Research and Voluntary Family Planning programs-----	1001	384
Title XI—Genetic Diseases, Hemophilia Programs, and Sudden Infant Death Syndrome:		
Part A—Genetic Diseases-----	1101	389
Part B—Sudden Infant Death Syndrome-----	1121	392
Part C—Hemophilia Programs-----	1131	392
Title XII—Emergency Medical Services Systems-----	1201	396
Title XIII—Health Maintenance Organizations-----	1301	414
Title XIV—Safety of Public Water Systems-----		444
Title XV—National Health Planning and Development:		
Part A—National Guidelines for Health Planning-----	1501	445
Part B—Health Systems Agencies-----	1511	448
Part C—State Health Planning and Development-----	1521	466
Part D—General Provisions-----	1531	477
Title XVI—Health Resources Development:		
Part A—Purpose, State Plan, and Project Approval-----	1601	487
Part B—Allotments-----	1610	492
Part C—Loans and Loan Guarantees-----	1620	496
Part D—Project Grants-----	1625	501
Part E—General Provisions-----	1630	502
Part F—Area Health Services Development Funds-----	1640	508
Title XVII—Health Information and Health Promotion-----	1701	510
Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963:		
Title I—Developmental Disabilities Services and Facilities Construction Act:		
Part A—General Provisions-----	101	520
Part B—University Affiliated Facilities-----	121	530
Part C—Grants for Planning, Provision of Services, and Construction and Operation of Facilities for Persons With Developmental Disabilities-----	131	533
Part D—Special Project Grants-----	145	543
Title II—Community Mental Health Centers:		
Part A—Planning and Operations Assistance-----	201	549
Part B—Financial Distress Grants-----	211	565
Part C—Facilities Assistance-----	221	567
Part D—Rape Prevention and Control-----	231	574
Part E—General Provisions-----	235	576
Title III—Training of Teachers of Mentally Retarded and Other Handicapped Children-----		582
Title IV—General-----		583
Title V—Training of Physical Educators and Recreation Personnel for Mentally Retarded and other Handicapped Children-----		584

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Excerpts):	Page
Title I—National Institute on Alcohol Abuse and Alcoholism-----	589
Title II—Alcohol Abuse and Alcoholism Prevention, Treatment, Rehabilitation Programs for Federal Civilian Employees-----	592
Title III—Federal Assistance for State and Local Programs:	
Part A—Grants To States-----	593
Part B—Project Grants and Contracts-----	598
Part C—Admission to Hospitals and Outpatient Facilities-----	602
Title IV—The National Advisory Council on Alcohol Abuse and Alcoholism-----	605
Title V—Research-----	606
Title VI—General-----	609
Drug Abuse Office and Treatment Act of 1972:	
Title I—Findings and Declaration of Policy; Definitions; Termination-----	613
Title II—Office of Drug Abuse Policy-----	615
Title III—National Drug Abuse Strategy-----	618
Title IV—Other Federal Programs-----	620
Title V—National Institute on Drug Abuse; National Advisory Council on Drug Abuse-----	633
Appendix: Administrative procedure provisions-----	A3

VOLUME II—FOOD, DRUG, AND RELATED LAW

Federal Food, Drug, and Cosmetic Act:	
Chapter I—Short Title-----	3
Chapter II—Definitions-----	3
Chapter III—Prohibited Acts and Penalties-----	9
Chapter IV—Food-----	17
Chapter V—Drugs and Devices-----	41
Chapter VI—Cosmetics-----	123
Chapter VII—General Administrative Provisions-----	125
Chapter VIII—Imports and Exports-----	146
Chapter IX—Miscellaneous-----	148
Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970)-----	153
Title II—Control and Enforcement-----	155
Part A—Short Title; Findings and Declaration; Definitions-----	155
Part B—Authority To Control; Standards and Schedules-----	159
Part C—Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances-----	169
Part D—Offenses and Penalties-----	180
Part E—Administrative and Enforcement Provisions-----	193
Part F—Advisory Commission-----	205
Part G—Conforming, Transitional and Effective Date, and General Provisions-----	207
Controlled Substances Import and Export Act (Title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970)-----	215
Title III—Importation and Exportation; Amendments and Repeals of Revenue Laws-----	216
Part A—Importation and Exportation-----	216
Part B—Amendments and Repeals, Transitional and Effective Date Provisions-----	224
Narcotic Addict Rehabilitation Act of 1966-----	233
Title I—Civil Commitment in Lieu of Prosecution-----	234
Title II—Sentencing to Commitment for Treatment-----	239
Title III—Civil Commitment of Persons Not Charged With Any Criminal Offense-----	242
Title IV—Rehabilitation and Posthospitalization Care Programs and Assistance to States and Localities-----	248
Title V—Sentencing After Conviction for Violation of Law Relating to Narcotic Drugs or Marihuana-----	249
Title VI—Miscellaneous Provisions-----	250
Federal Cigarette Labeling and Advertising Act-----	253
Little Cigar Act of 1973-----	259
Tea Importation Act-----	263
Federal Import Milk Act-----	271

Filled Milk	277
Appendix: Administrative procedure provisions	A3

VOLUME III—ENVIRONMENT LAW

The Clean Air Act	3
Title I—Air Pollution Prevention and Control	3
Part A—Air quality and emission limitations	3
Part B—Ozone protection	72
Part C—Prevention of significant deterioration of air quality	78
Part D—Plan requirements for nonattainment areas	96
Title II—Emission Standards for Moving Sources	102
Part A—Motor Vehicle Emission and Fuel Standards	102
Part B—Aircraft Emission Standards	141
Title III—General	143
Appendix: Provisions of the Clean Air Act Amendments of 1977 which did not amend the Clean Air Act	177
Solid Waste Disposal Act	191
Title II—Solid Waste Disposal	191
Toxic Substances Control Act	251
Noise Control Act of 1972	319
National Materials Policy Act of 1970	345
Title II—National Materials Policy	345
Lead-Based Paint Poisoning Prevention Act	349
Title I—Grants for the Detection and Treatment of Lead-Based Paint Poisoning	350
Title II—Grants for the Elimination of Lead-Based Paint Poisoning	353
Title III—Federal Demonstration and Research Program; Federal Housing Administration Requirements	354
Title IV—Prohibition Against Future Use of Lead-Based Paint	356
Title V—General	357
Occupational Safety and Health Act	363
Public Health Service Act:	
Title XIV—Safety of Public Water Systems	405
Part A—Definitions	405
Part B—Public Water Systems	407
Part C—Protection of Underground Sources of Drinking Water	423
Part D—Emergency Powers	431
Part E—General Provisions	431
National Environmental Policy Act	455
Title I	456
Title II	459
Appendix: Administrative procedure provisions	A3

VOLUME IV—CONSUMER PROTECTION LAW

Federal Hazardous Substances Act	3
Fair Packaging and Labeling Act	25
Poison Prevention Packaging Act	37
Flammable Fabrics Act	47
Consumer Product Safety Act	61
Federal Caustic Poison Act	105
Magnuson-Moss Warranty—Federal Trade Commission Improvement Act	115
Title I—Consumer Product Warranties	116
Title II—Federal Trade Commission Improvements	128
Federal Trade Commission Act	131
Motor Vehicle Information and Cost Savings Act	161
Title I—Bumper Standards	163
Title II—Automobile Consumer Information Study	172
Title III—Diagnostic Inspection Demonstration Projects	177
Title IV—Odometer Requirements	180
Title V—Improving Automotive Efficiency	190
National Traffic and Motor Vehicle Safety Act of 1966	213
Title I—Motor Vehicle Safety Standards	213
Title II—Tire Safety	245
Title III—Research and Test Facilities	247
Refrigerator Safety Act	251
Appendix: Administrative procedure provisions	A3

FEDERAL HAZARDOUS SUBSTANCES ACT

NOTE.—See section 30 of the Consumer Product Safety Act (P.L. 92-573 (p. 289) which transferred the functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act and the Poison Prevention Packaging Act of 1970 to the Consumer Product Safety Commission and transferred the functions of that Secretary, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act to that Commission.

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FEDERAL HAZARDOUS SUBSTANCES ACT

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Hazardous Substances Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) The term "territory" means any territory or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico but excluding the Canal Zone.

(b) The term "interstate commerce" means (1) commerce between any State or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

(c) The term "Department" means the Department of Health, Education, and Welfare.

(d) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(e) The term "person" includes an individual, partnership, corporation, and association.

(f) The term "hazardous substance" means:

1. (A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Secretary by regulation finds, pursuant to the provisions of section 3(a), meet the requirements of subparagraph 1(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Secretary determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this Act in order to protect the public health.

15 U.S.C. 1261

(D) Any toy or other article intended for use by children which the Secretary by regulation determines, in accordance with section 3(e) of this Act, presents an electrical, mechanical, or thermal hazard.

2. The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, nor to tobacco and tobacco products, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such an economic poison.

3. The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(h) (1) The term "highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Secretary finds that available data on human experience with any substance indicate results differ-

ent from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Secretary. Before designating any substance as a strong sensitizer, the Secretary, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(l) The term "extremely flammable" shall apply to any substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, the term "flammable" shall apply to any substance which has a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester, and the term "combustible" shall apply to any substance which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester; except that the flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods found by the Secretary to be generally applicable to such materials or containers, respectively, and established by regulations issued by him, which regulations shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with such methods.

(m) The term "radioactive substance" means a substance which emits ionizing radiation.

(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside con-

tainer or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(o) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 or if such substance, except as otherwise provided by or pursuant to section 3, fails to bear a label—

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Secretary by regulation permits or requires the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic, (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible," "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the Secretary pursuant to section 3; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h); (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in con-

spicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 2(2)(D) of the Poison Prevention Packaging Act of 1970 if it is a substance described in paragraph 1 of section 2(f) of this Act and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.

(q)(1) The term "banned hazardous substance" means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided*, That the Secretary, by regulation, (i) shall exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), and provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that he determines that such articles can be adequately labeled to protect the purchasers and users thereof.

(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of sections 701 (e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That if the Secretary finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, he may by order

published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a "banned hazardous substance" pending the completion of proceedings relating to the issuance of such regulations.

(r) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(s) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article, (2) from propulsion of the article (or any part or accessory thereof), (3) from points or other protrusions, surfaces, edges, openings, or closures, (4) from moving parts, (5) from lack or insufficiency of controls to reduce or stop motion, (6) as a result of self-adhering characteristics of the article, (7) because the article (or any part or accessory thereof) may be aspirated or ingested, (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

(t) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

REGULATIONS DECLARING HAZARDOUS SUBSTANCES AND ESTABLISHING VARIATIONS AND EXEMPTIONS

15 U.S.C. 1262

SEC. 3. (a) 1. Whenever in the judgment of the Secretary such action will promote the objectives of this Act by avoiding or resolving uncertainty as to its application, the Secretary may by regulation declare to be a hazardous substance, for the purposes of this Act, any substance or mixture of substances which he finds meets the requirements of subparagraph (1)(A) of section 2(f).

2. Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall in all respects be governed by the provisions of sections 701 (e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act, except that—

(A) the Secretary's order after public hearing (acting upon objections filed to an order made prior to hearing) shall be subject to the requirements of

section 409(f)(2) of the Federal Food, Drug, and Cosmetic Act; and

(B) the scope of judicial review of such order shall be in accordance with the fourth sentence of paragraph (2), and with the provisions of paragraph (3), of section 409(g) of the Federal Food, Drug, and Cosmetic Act.

(b) If the Secretary finds that the requirements of section 2(p)(1) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may by regulation establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(c) If the Secretary finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this Act is impracticable or is not necessary for the adequate protection of the public health and safety, the Secretary shall promulgate regulations exempting such substance from these requirements to the extent he determines to be consistent with adequate protection of the public health and safety.

(d) The Secretary may exempt from the requirements established by or pursuant to this Act any hazardous substance or container of a hazardous substance with respect to which he finds that adequate requirements satisfying the purposes of this Act have been established by or pursuant to any other Act of Congress.

(e) (1) A determination by the Secretary that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by regulation in accordance with the procedures prescribed by section 553 (other than clause (B) of the last sentence of subsection (b) of such section) of title 5 of the United States Code unless the Secretary elects the procedures prescribed by subsection (e) of section 701 of the Federal Food, Drug, and Cosmetic Act, in which event such subsection and subsections (f) and (g) of such section 701 shall apply to the making of such determination. If the Secretary makes such election, he shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(2) If, before or during a proceeding pursuant to paragraph (1) of this subsection, the Secretary finds that, be-

cause of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and he, by order published in the Federal Register, gives notice of such finding, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this Act until the proceeding has been completed. If not yet initiated when such order is published, such a proceeding shall be initiated as promptly as possible.

(3) (A) In the case of any toy or other article intended for use by children which is determined by the Secretary, in accordance with section 553 of title 5 of the United State Code, to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the 60th day after the regulation making such determination is issued by the Secretary, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based his determination, as provided in section 2112 of title 28 of the United States Code.

(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(C) Upon the filing of the petition under this paragraph, the court shall have jurisdiction to review the determination of the Secretary in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of the second sentence of section 706 of title 5 of the United States Code. If the court ordered additional evidence to be taken under subparagraph (B) of this paragraph, the court shall also review the Secretary's determination to determine if, on the basis of the entire record before the court pursuant to subparagraphs (A) and (B) of this paragraph, it is supported by substantial evidence.

If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this paragraph, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of such title.

(D) The judgment of the court affirming or setting aside, in whole or in part, any such determination of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

PROHIBITED ACTS

SEC. 4. The following acts and the causing thereof are **15 U.S.C. 1263** hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a misbranded hazardous substance or banned hazardous substance.

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guarantee or undertaking referred to in section 5(b) (2) which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by section 11(b) or to permit access to and copying of any record as authorized by section 12.

(f) The introduction or delivery for introduction into interstate commerce, or the receipt in interstate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As

used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meaning as in the Federal Food, Drug, and Cosmetic Act.

(g) The manufacture of a misbranded hazardous substance or banned hazardous substance within the District of Columbia or within any territory not organized with a legislative body.

(h) The use by any person to his own advantage, or revealing other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Act, of any information acquired under authority of section 11 concerning any method of process which as a trade secret is entitled to protection.

PENALTIES

15 U.S.C. 1264

SEC. 5. (a) Any person who violates any of the provisions of section 4 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than \$500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one year, or a fine of not more than \$3,000, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 4(c), if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 4(a), if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this Act; or (3) for having violated subsection (a) or (c) of section 4 in respect of any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce, this clause shall not apply.

SEIZURES

SEC. 6. (a) Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 4(f), be introduced into interstate commerce, or which has been manufactured in violation of section 4(g), shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

15 U.S.C. 1265

(b) Such hazardous substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of one such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Any hazardous substance condemned under this section shall, after entry of the decree, be disposed of by

destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such hazardous substance shall not be sold under such decree contrary to the provisions of this Act or the laws of the jurisdiction in which sold: *Provided*, That, after entry of the decree and upon payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such hazardous substance shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State or territory in which sold, the court may by order direct that such hazardous substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act under the supervision of an officer or employee duly designated by the Secretary, and the expense of such supervision shall be paid by the person obtaining release of the hazardous substance under bond.

(d) When a decree of condemnation is entered against the hazardous substance, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the hazardous substance.

(e) In the case of removal for trial of any case as provided by subsection (b)—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

HEARING BEFORE REPORT OF CRIMINAL VIOLATION

15 U.S.C. 1266

SEC. 7. Before any violation of this Act is reported by the Secretary to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

INJUNCTIONS

15 U.S.C. 1267

SEC. 8. (a) The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of

rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

STYLE OF ENFORCEMENT PROCEEDINGS—SUBPOENAS

SEC. 9. All criminal proceedings and all libel or injunction proceedings for the enforcement, or to restrain violations, of this Act shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States in any district may run into any other district in any such proceeding.

15 U.S.C. 1268

REGULATIONS

SEC. 10. (a) The authority to promulgate regulations for the efficient enforcement of this Act, except as otherwise provided in this section, is hereby vested in the Secretary.

15 U.S.C. 1269

(b) The Secretary of the Treasury and the Secretary of Health, Education, and Welfare shall jointly prescribe regulations for the efficient enforcement of the provisions of section 14, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Secretary of Health, Education, and Welfare shall determine.

EXAMINATIONS AND INVESTIGATIONS

SEC. 11. (a) The Secretary is authorized to conduct examinations, inspections, and investigations for the purposes of this Act through officers and employees of the Department or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Secretary as an officer of the Department.

15 U.S.C. 1270

(b) For purposes of enforcement of this Act, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction

into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(c) If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

RECORDS OF INTERSTATE SHIPMENT

15 U.S.C. 1271

SEC. 12. For the purpose of enforcing the provisions of this Act, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided*, That evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this Act by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

PUBLICITY

15 U.S.C. 1272

SEC. 13. (a) The Secretary may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof.

(b) The Secretary may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Secretary, imminent danger to health. Nothing in this section shall be construed to prohibit the Secretary from collecting, reporting, and illustrating the results of the investigations of the Department.

IMPORTS

SEC. 14. (a) The Secretary of the Treasury shall deliver to the Secretary of Health, Education, and Welfare, upon his request, samples of hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health, Education, and Welfare and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 4(f), then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

15 U.S.C. 1273

(b) Pending decision as to the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of such hazardous substance to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Secretary of Health, Education, and Welfare that the hazardous substance can, by relabeling or other action, be brought into compliance with this Act, final determination as to admission of such hazardous substance may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected hazardous substances or portions thereof, as may be specified in the Secretary's authorization). All such relabeling or other action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or em-

ployee of the Department of Health, Education, and Welfare designated by the Secretary, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) All expenses (including travel, per diem, or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any hazardous substance refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

REPURCHASE OF BANNED HAZARDOUS SUBSTANCES

15 U.S.C. 1274

SEC. 15. (a) In the case of any article or substance sold by its manufacturer, distributor, or dealer which is a banned hazardous substance (whether or not it was such at the time of its sale), such article or substance shall, in accordance with regulations of the Secretary, be repurchased as follows:

(1) The manufacturer of any such article or substance shall repurchase it from the person to whom he sold it, and shall—

(A) refund that person the purchase price paid for such article or substance,

(B) if that person has repurchased such article or substance pursuant to paragraph (2) or (3), reimburse him for any amounts paid in accordance with that paragraph for the return of such article or substance in connection with its repurchase, and

(C) if the manufacturer requires the return of such article or substance in connection with his repurchase of it in accordance with this paragraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(2) The distributor of any such article or substance shall repurchase it from the person to whom he sold it, and shall—

(A) refund that person the purchase price paid for such article or substance,

(B) if that person has repurchased such article or substance pursuant to paragraph (3), reimburse him for any amounts paid in accordance with that

paragraph for the return of such article or substance in connection with its repurchase, and

(C) if the distributor requires the return of such article or substance in connection with his repurchase of it in accordance with this paragraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(3) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund the purchaser the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

(b) For the purposes of this section, (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance.

SEPARABILITY CLAUSE

SEC. 16. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

15 U.S.C. 1261
note

TIME OF TAKING EFFECT

SEC. 17. This Act shall take effect upon the date of its enactment; but no penalty or condemnation shall be enforced for any violation of this Act which occurs—

15 U.S.C. 1261
note

(a) prior to the expiration of the sixth calendar month after the month in which this Act is enacted, or

(b) prior to the expiration of such additional period or periods, ending not more than eighteen months after the month of enactment of this Act, as the Secretary may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods: *Provided*, That the Secretary may limit the application of such additional period or periods to violations related to specified provisions of this Act, or to specified kinds of hazardous substances or packages thereof.

EFFECT UPON FEDERAL AND STATE LAW

SEC. 18. (a) Nothing in this Act shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191-1200), or any

15 U.S.C. 1261
note

regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder, or under sections 204(a)(2) and 204(a)(3) of the Interstate Commerce Act, as amended (relating to the transportation of dangerous substances and explosives by surface carriers); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 or regulations promulgated under section 601 of the Federal Aviation Act of 1958 (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act; or of the Public Health Service Act; or of the Federal Insecticide, Fungicide, and Rodenticide Act; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled "An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes", approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19.

(b) (1) (A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designated to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk

of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

(3) (A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act for such substance (or its packaging).

(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(4) Paragraph (1)(B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph.

(5) As used in this subsection, the term "Commission" means the Consumer Product Safety Commission.

REPEAL OF FEDERAL CAUSTIC POISON ACT

15 U.S.C. 401
note

SEC. 19. The Federal Caustic Poison Act (44 Stat. 1406) is repealed effective at the close of the sixth calendar month after the month of enactment of this Act, except that the Federal Caustic Poison Act shall remain in full force and effect with respect to any "dangerous caustic or corrosive substance" (as defined by that Act) which is an article subject to the Federal Food, Drug, and Cosmetic Act and which is, by virtue of paragraph 2 of section 2(f) of this Act, excluded from the term "hazardous substance" as defined in this Act: *Provided*, That, if the Secretary, pursuant to section 17(b) of this Act, prescribes an additional period or periods during which violations of this Act shall not be enforceable and if such additional period or periods are applicable to violations of this Act involving one or more substances defined as "dangerous caustic or corrosive substances" by the Federal Caustic Poison Act, that Act shall, with respect to such substance or substances, remain in full force and effect during such additional period or periods: *Provided further*, That, with respect to violations, liabilities incurred or appeals taken prior to the close of said sixth month or, if applicable, prior to the expiration of the additional period or periods referred to in the preceding proviso, all provisions of the Federal Caustic Poison Act shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, and appeals.

FAIR PACKAGING AND LABELING ACT

(23)

the first time in the history of the world, the people of the United States have been compelled to go to war with their own government. The people of the United States have been compelled to go to war with their own government. The people of the United States have been compelled to go to war with their own government. The people of the United States have been compelled to go to war with their own government.

FAIR PACKAGING AND LABELING ACT

[PUBLIC LAW 89-755, APPROVED NOVEMBER 3, 1966]

AN ACT To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Packaging and Labeling Act."

15 U.S.C. 1451
note

DECLARATION OF POLICY

SEC. 2. Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

15 U.S.C. 1451

PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND LABELING

SEC. 3. (a) It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Act and of regulations promulgated under the authority of this Act.

15 U.S.C. 1452

(b) The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

REQUIREMENTS AND PROHIBITIONS

15 U.S.C. 1453

SEC. 4. (a) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 6 of this Act which shall provide that—

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor;

(2) The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label;

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A) (i) if on a package containing less than four pounds or one gallon and labeled in terms of weight or fluid measure, shall, unless subparagraph (ii) applies and such statement is set forth in accordance with such subparagraph, be expressed both in ounces (with identification as to avoirdupois or fluid ounces), and, if applicable, in pounds for weight units, with any remainder in terms of ounces or common or decimal fractions of the pound; or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart;

(ii) if on a random package, may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than two decimal places;

(iii) if on a package labeled in terms of linear measure, shall be expressed both in terms of inches and the largest whole unit (yards, yards and feet, or feet, as appropriate) with any remainder in terms of inches or common or decimal fractions of the foot or yard;

(iv) if on a package labeled in terms of measure of area, shall be expressed both in terms of square inches and the largest whole square unit (square yards, square yards and square feet, or square feet, as appropriate) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard;

(B) shall appear in conspicuous and easily legible type in distinct contrast (by typography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed; and

(4) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

(5) For purposes of paragraph (3)(A)(ii) of this subsection the term "random package" means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, that is, packages with no fixed weight pattern.

(b) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

ADDITIONAL REGULATIONS

SEC. 5. (a) The authority to promulgate regulations under this Act is vested in (A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

15 U.S.C. 1454

(b) If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the

requirements otherwise applicable under section 4 of this act is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 2 of this act.

(c) Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

(2) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of section 201(f) of the Federal Food, Drug, and Cosmetic Act) bear (A) the common or usual name of such consumer commodity, if any, and (B) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional-slack-fill of packages containing consumer commodities.

For purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such package.

(d) Whenever the Secretary of Commerce determines that there is undue proliferation of the weights, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

(e) If (1) after one year after the date on which the Secretary of Commerce first makes the request of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Secretary under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)). Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employee of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e),

(f), and (g)) in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) In carrying into effect the provisions of this Act, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this Act preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation.

ENFORCEMENT

15 U.S.C. 1456

SEC. 7. (a) Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act, but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 3 of this Act.

(b) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(c) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

15 U.S.C. 1457

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging

or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(d) of this Act, shall transmit to the Congress each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year. All agencies except the Federal Trade Commission shall submit their report in January of each year. The Federal Trade Commission shall include this report in the Commission's annual report to Congress.

COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

15 U.S.C. 1458

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

DEFINITIONS

SEC. 10. For the purposes of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

15 U.S.C. 1459

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37

Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1) and 356);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) ; or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity ; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), or the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.

(d) The term "person" includes any firm, corporation, or association.

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries.

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

SAVING PROVISION

SEC. 11. Nothing contained in this Act shall be construed to repeal, invalidate, or supersede— 15 U.S.C. 1460

- (a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;
- (b) the Federal Food, Drug, and Cosmetic Act; or
- (c) the Federal Hazardous Substances Labeling Act.

EFFECT UPON STATE LAW

SEC. 12. It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which are less stringent than or require information different from the requirements of section 4 of this Act or regulations promulgated pursuant thereto. 15 U.S.C. 1461

EFFECTIVE DATE

SEC. 13. This Act shall take effect on July 1, 1967: 15 U.S.C. 1461
note

Provided, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic, as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

POISON PREVENTION PACKAGING ACT

NOTE.—See section 30 of the Consumer Product Safety Act (P.L. 92-573) (p. 289) which transferred the functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act and the Poison Prevention Packaging Act of 1970 to the Consumer Product Safety Commission and transferred the functions of that Secretary, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act to that Commission.

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POISON PREVENTION PACKAGING ACT

[PUBLIC LAW 91-601, APPROVED DECEMBER 30, 1970]

AN ACT To provide for special packaging to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting household substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SHORT TITLE]

SECTION 1. This Act may be cited as the "Poison Prevention Packaging Act of 1970".

15 U.S.C. 1471
note

[DEFINITIONS]

SEC. 2. For the purpose of this Act—

15 U.S.C. 1471

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 2(f) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f));

(B) a food, drug, or cosmetic as those terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

(C) a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(3) The term "package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of section 4(a)(2) of this Act, also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include—

(A) any shipping container or wrapping used solely for the transportation of any household sub-

stance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or

(B) any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.

(4) The term "special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

(5) The term "labeling" means all labels and other written, printed, or graphic matter (A) upon any household substance or its package, or (B) accompanying such substance.

[SPECIAL PACKAGING STANDARDS]

15 U.S.C. 1472

SEC. 3. (a) The Secretary, after consultation with the technical advisory committee provided for in section 6 of this Act, may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if he finds that—

(1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(2) the special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(b) In establishing a standard under this section, the Secretary shall consider—

(1) the reasonableness of such standard;

(2) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) the manufacturing practices of industries affected by this Act; and

(4) the nature and use of the household substance.

(c) In carrying out this Act, the Secretary shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(d) Nothing in this Act shall authorize the Secretary to prescribe specific packaging designs, product content,

package quantity, or, with the exception of authority granted in section 4(a)(2) of this Act, labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the Secretary may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

[MARKETING OF NONCOMPLYING PACKAGES]

SEC. 4. (a) For the purpose of making any household substance which is subject to a standard established under section 3 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if—

15 U.S.C. 1473

(1) the manufacturer (or packer) also supplies such substance in packages which comply with such standard; and

(2) the packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the Secretary may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(b) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(c) In the case of a household substance subject to such a standard which is packaged under subsection (a) in a noncomplying package, if the Secretary determines that such substance is not also being supplied by a manufacturer (or packer) in popular size packages which comply with such standard, he may, after giving the manufacturer (or packer) an opportunity to comply with the purposes of this Act, by order require such substance to be packaged by such manufacturer (or packer) exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this Act.

[PROCEEDINGS]

SEC. 5. (a) Proceedings to issue, amend, or repeal a regulation prescribing a standard under section 3 shall be conducted in accordance with the procedures pre-

15 U.S.C. 1474

scribed by section 553 (other than paragraph (3)(B) of the last sentence of subsection (b) of such section) of title 5 of the United States Code unless the Secretary elects the procedures prescribed by subsection (e) of section 701 of the Federal Food, Drug, and Cosmetic Act, in which event such subsection and subsections (f) and (g) of such section 701 shall apply to such proceedings. If the Secretary makes such election, he shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(b) (1) In the case of any standard prescribed by a regulation issued in accordance with section 553 of title 5 of the United States Code, any person who will be adversely affected by such a standard may, at any time prior to the 60th day after the regulation prescribing such standard is issued by the Secretary, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based his standard, as provided in section 2112 of title 28 of the United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original standard, with the return of such additional evidence.

(3) Upon the filing of the petition under paragraph (1) of this subsection the court shall have jurisdiction to review the standard of the Secretary in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of section 706 of title 5 of the United States Code. If the court ordered additional evidence to be taken under paragraph (2) of this subsection, the court shall also review the Secretary's standard to determine if, on the basis of the entire record before the court pursuant to paragraphs (1) and (2) of this subsection, it is supported by substantial evidence. If the court finds the standard is not so supported, the court may set it aside.

(4) With respect to any standard reviewed under this subsection, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of such title 5.

(5) The judgment of the court affirming or setting aside, in whole or in part, any such standard of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

[TECHNICAL ADVISORY COMMITTEE]

SEC. 6. (a) For the purpose of assisting in carrying out the purposes of this Act, the Secretary shall appoint a technical advisory committee, designating a member thereof to be chairman, composed of not more than eighteen members who are representative of (1) the Department of Health, Education, and Welfare, (2) the Department of Commerce, (3) manufacturers of household substances subject to this Act, (4) scientists with expertise related to this Act and licensed practitioners in the medical field, (5) consumers, and (6) manufacturers of packages and closures for household substances. The Secretary shall consult with the technical advisory committee in making findings and in establishing standards pursuant to this Act.

15 U.S.C. 1475

(b) Members of the technical advisory committee who are not regular full-time employees of the United States shall, while attending meetings of such committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltimes, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

[AMENDMENTS]

SEC. 7. (a) Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)) is amended—

(1) by striking out “which substance” in the part preceding paragraph (1) and inserting in lieu thereof “if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 or if such substance”; and

(2) by adding the following after and below paragraph (2):

“The term ‘misbranded hazardous substance’ also includes a household substance as defined in section 2(2)

(D) of the Poison Prevention Packaging Act of 1970 if it is a substance described in paragraph 1 of section 2(f) of this Act and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.”.

(b) Section 2z(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135(z)(2)) is amended by striking out the period at the end of paragraph (h) of such section and inserting in lieu thereof “; or” and by adding at the end thereof a new paragraph as follows:

“(i) if its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.”

(c) Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end thereof a new paragraph as follows:

“(n) If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.”

(d) Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) is amended by adding at the end thereof a new paragraph as follows:

“(p) If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.”

(e) Section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(2)) is amended by striking out “and (h)” and inserting in lieu thereof “, (h), and (p)”.

(f) Section 602 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 362) is amended by adding at the end thereof a new paragraph as follows:

“(f) If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.”

[PREEMPTION]

SEC. 8. (a) Except as provided in subsections (b) and (c), whenever a standard established by the Secretary under this Act applicable to a household substance is in effect, no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the standard established under section 3 (and any exemption therefrom and requirement related thereto) of this Act.

(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement in effect under this Act.

(c)(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

(A) compliance with the State or political subdivision standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice

with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

[EFFECTIVE DATE]

15 U.S.C. 1471
note

SEC. 9. This Act shall take effect on the date of its enactment. Each regulation establishing a special packaging standard shall specify the date such standard is to take effect which date shall not be sooner than one hundred and eighty days or later than one year from the date such regulation is final, unless the Secretary, for good cause found, determines that an earlier effective date is in the public interest and publishes in the Federal Register his reason for such finding, in which case such earlier date shall apply. No such standard shall be effective as to household substances subject to this Act packaged prior to the effective date of such final regulation.

FLAMMABLE FABRICS ACT

NOTE.—See section 30 of the Consumer Product Safety Act (P.L. 92-573) (p. 289) which transferred the functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act and the Poison Prevention Packaging Act of 1970 to the Consumer Product Safety Commission and transferred the functions of that Secretary, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act to that Commission.



FLAMMABLE FABRICS ACT

AN ACT To prohibit the introduction or movement in interstate commerce of articles of wearing apparel and fabrics which are so highly flammable as to be dangerous when worn by individuals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Flammable Fabrics Act."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

(c) The term "territory" includes the insular possessions of the United States and also any territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

(e) The term "interior furnishing" means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.

(f) The term "fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or sub-

15 U.S.C. 1191

stitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in subsection (h).

(g) The term "related material" means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in subsection (h).

(h) The term "product" means any article of wearing apparel or interior furnishing.

(i) The term "Commission" means the Federal Trade Commission.

(j) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" approved September 26, 1914, as amended.

PROHIBITED TRANSACTIONS

15 U.S.C. 1192

SEC. 3. (a) The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 4 of this Act, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

(b) The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 4 of this Act, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.

REGULATION OF FLAMMABLE FABRICS

15 U.S.C. 1193

SEC. 4. (a) Whenever the Secretary of Commerce finds on the basis of the investigations or research conducted pursuant to section 14 of this Act that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, he shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

(b) Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the Secretary of Commerce finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics, related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the Secretary finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, he may under such conditions as the Secretary may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

(c) The Secretary of Commerce may obtain from any person by regulation or subpena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which he is required or authorized to make pursuant to this Act. All information reported to or otherwise obtained by the Secretary or his representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

(d) Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, United States Code, except that interested persons shall be given an opportunity for the oral presentation of data, views, or arguments in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e) (1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the standard or regulation, as provided in section 2112 of title 28 of the United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original standard or regulation or amendment thereto, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief as provided in such chapter. The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term "record" means the standard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(f) A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this Act, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e).

ADMINISTRATION AND ENFORCEMENT

SEC. 5. (a) Except as otherwise specifically provided herein, sections 3, 5, 6, and 8(b) of this Act shall be enforced by the Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act.

15 U.S.C. 1194

(b) The Commission is authorized and directed to prevent any person from violating the provisions of section 3 of this Act in the same manner, by the same means and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act; and any such person violating any provision of section 3 of this Act shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this Act. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.

(d) The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any product, fabric or related material which it has reason to believe falls within the prohibitions of this Act; and

(2) cooperate on matters related to the purposes of this Act with any department or agency of the Government; with any State or territory or with the District of Columbia or the Commonwealth of Puerto Rico; or with any department, agency, or political subdivision thereof; or with any person.

INJUNCTION AND CONDEMNATION PROCEEDINGS

15 U.S.C. 1195

SEC. 6. (a) Whenever the Commission has reason to believe that any person is violating or is about to violate section 3, or a rule or regulation prescribed under section 5(c), of this Act, and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade Commission Act is issued and dismissed by the Commission or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act or is set aside by the court on review, the Commission may bring suit in the district court of the United States, for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be), to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(b) Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced in commerce in violation of section 3 of this Act, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical products, fabrics, or related materials are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

(c) In any such action the court, upon application seasonably made before trial, shall by order allow any party

in interest, his attorney or agent, to obtain a representative sample of the product, fabric, or related material seized.

(d) If such products, fabrics, or related materials are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States.

PENALTIES

SEC. 7. Any person who willfully violates section 3 or 8(b) of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this Act.

15 U.S.C. 1196

GUARANTY

SEC. 8. (a) No person shall be subject to prosecution under section 7 of this Act for a violation of section 3 of this Act if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 4 of this Act show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 4 of this Act, and (2) has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or other related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a

15 U.S.C. 1197

form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

(b) It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

SHIPMENTS FROM FOREIGN COUNTRIES

15 U.S.C. 1198

SEC. 9. An imported product, fabric, or related material to which flammability standards under this Act are applicable shall not be delivered from customs custody except as provided in section 499 of the Tariff Act of 1930, as amended. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 499 of the Tariff Act of 1930, as amended, and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

INTERPRETATION AND SEPARABILITY

15 U.S.C. 1199

SEC. 10. The provisions of this Act shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law. If any provision of this Act or the application thereof to any person or circumstances is held invalid the remainder of the Act

and the application of such provisions to any other person or circumstances shall not be affected thereby.

EXCLUSIONS

SEC. 11. The provisions of this Act shall not apply (a) to any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business; (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this Act: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this Act contrary to the terms of the contract or commission service; or (c) to any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 4 of this Act.

15 U.S.C. 1200

EFFECTIVE DATE

SEC. 12. This Act shall take effect one year after the date of its passage.

AUTHORIZATION OF APPROPRIATIONS

SEC. 13. There are hereby authorized to be appropriated \$1,500,000 for the fiscal year ending June 30, 1968, \$2,500,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, and \$4,000,000 for the fiscal year ending June 30, 1973, to carry out the provisions of this Act.

INVESTIGATIONS

SEC. 14. (a) The Secretary of Health, Education, and Welfare in cooperation with the Secretary of Commerce shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials. The Secretary of Health, Education, and Welfare shall submit annually a report to the President and to the Congress containing the results of the study and investigation.

15 U.S.C. 1201

(b) In cooperation with appropriate public and private agencies, the Secretary of Commerce is authorized to—

- (1) conduct research into the flammability of products, fabrics, and materials;
- (2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;
- (3) develop flammability test methods and testing devices; and

(4) offer appropriate training in the use of flammability test methods and testing devices.
 The Secretary shall annually report the results of these activities to the Congress.

EXPORTS

15 U.S.C. 1202

SEC. 15. (a) This Act shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; except that this Act shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(b) This Act shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States; except that this Act shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

PREEMPTION

15 U.S.C. 1203

SEC. 16. (a) Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or

other regulation is in effect under this Act and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this Act.

(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this Act, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this Act, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this Act for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(d) For purposes of this section—

(1) a reference to a flammability standard or other regulation for a fabric, related material, or product

in effect under this Act includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90-189); and
 (2) the term "Commission" means the Consumer Product Safety Commission.

NATIONAL ADVISORY COMMITTEE FOR THE FLAMMABLE FABRICS ACT

15 U.S.C. 1204

SEC. 17. (a) The Secretary of Commerce shall appoint a National Advisory Committee for the Flammable Fabrics Act, composed of not less than nine members, fairly representative of manufacturers, distributors, and the consuming public. The members of the Committee who are appointed to represent manufacturers shall include representatives from (1) the natural fiber producing industry, (2) the manmade fiber producing industry, and (3) manufacturers of fabrics, related materials, apparel, or interior furnishings. Each member appointed by the Secretary shall hold office for not more than two years, except that any member may be reappointed.

(b) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including travelttime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(c) The Secretary shall consult with the National Advisory Committee before prescribing flammability standards or other regulations established under this Act.

NOTE.—Public Law 90-189, S. 1003, 90th Congress, 1st Session (81 Stat. 568), approved December 14, 1967, which amended and revised the Flammable Fabrics Act, contains a savings clause (81 Stat. 574) which reads:

"SEC. 11. Notwithstanding the provisions of this Act, the standards of flammability in effect under the provisions of the Flammable Fabrics Act, as amended, on the day preceding the date of enactment of this Act, shall continue in effect for the fabrics and articles of wearing apparel to which they are applicable until superseded or modified by the Secretary of Commerce pursuant to the authority conferred by the amendments made by this Act."

CONSUMER PRODUCT SAFETY ACT

(59)



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CONSUMER PRODUCT SAFETY ACT

(PUBLIC LAW 92-573; Oct. 27, 1972)

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Consumer Product Safety Act". 15 U.S.C. 2051
note

TABLE OF CONTENTS

- Sec. 1. Short title ; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Consumer Product Safety Commission.
- Sec. 5. Product safety information and research.
- Sec. 6. Public disclosure of information.
- Sec. 7. Consumer product safety standards.
- Sec. 8. Banned hazardous products.
- Sec. 9. Administrative procedure applicable to promulgation of consumer product safety rules.
- Sec. 10. Commission responsibility—petition for consumer product safety rule.
- Sec. 11. Judicial review of consumer product safety rules.
- Sec. 12. Imminent hazards.
- Sec. 13. New products.
- Sec. 14. Product certification and labeling.
- Sec. 15. Notification and repair, replacement, or refund.
- Sec. 16. Inspection and recordkeeping.
- Sec. 17. Imported products.
- Sec. 18. Exports.
- Sec. 19. Prohibited acts.
- Sec. 20. Civil penalties.
- Sec. 21. Criminal penalties.
- Sec. 22. Injunctive enforcement and seizure.
- Sec. 23. Suits for damages by persons injured.
- Sec. 24. Private enforcement of product safety rules and of section 15 orders.
- Sec. 25. Effect on private remedies.
- Sec. 26. Effect on State standards.
- Sec. 27. Additional functions of Commission.
- Sec. 28. Product Safety Advisory Council.
- Sec. 29. Cooperation with States and with other Federal agencies.
- Sec. 30. Transfers of functions.
- Sec. 31. Limitation on jurisdiction.
- Sec. 32. Authorization of appropriations.
- Sec. 33. Separability.
- Sec. 34. Effective date.

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

15 U.S.C. 2051

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them

frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this Act.

(b) The purposes of this Act are—

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

DEFINITIONS

15 U.S.C. 2052

SEC. 3. (a) For purposes of this Act :

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by sections 102 (3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966),

(D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act),

(E) any article which, if sold by the manufacturer, producer, or importer, would be sub-

ject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 101 of the Federal Aviation Act of 1958),

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.); vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by action taken under any statute referred to in this subparagraph,

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201 (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act), or

(I) food. The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, including poultry and poultry products (as defined in sections 4 (e) and (f) of the Poultry Products Inspection Act), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

Except for the regulation under this Act or the Federal Hazardous Substances Act of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 30 of this Act to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18, United States Code. See sections 30(d) and 31 of this Act, for other limitations on Commission's authority to regulate certain consumer products.

(2) The term "consumer product safety rule" means a consumer products safety standard described

in section 7(a), or a rule under this Act declaring a consumer product a banned hazardous product.

(3) The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures or imports a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(7)(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(8) The term "manufactured" means to manufacture, produce, or assemble.

(9) The term "Commission" means the Consumer Product Safety Commission, established by section 4.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(11) The terms "to distribute in commerce" and "distribution in commerce" means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(13) The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(14) The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) A common carrier, contract carrier, or freight forwarder shall not, for purposes of this Act, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 4. (a) An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated shall act as Chairman until the expiration of his term of office as Commissioner. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

15 U.S.C. 2053

(b) (1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after the date of the enactment of this Act, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c) Not more than three of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

(d) No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the

Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

(f) (1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.

(g) (1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(2) The Chairman, subject to subsection (f) (2), may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions. No regular officer or employee of the Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS-14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this Act, for a period of 12 months after terminating employment with the Commission.

(3) In addition to the number of positions authorized by section 5108(a) of title 5, United States Code, the Chairman, subject to the approval of the Commission,

and subject to the standards and procedures prescribed by chapter 51 of title 5, United States Code, may place a total of twelve positions in grades GS-16, GS-17, and GS-18.

(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(h) (1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(59) Chairman, Consumer Product Safety Commission.”

(2) Section 5315 of such title is amended by adding at the end thereof the following new paragraph:

“(97) Members, Consumer Product Safety Commission (4).”

(i) Subsections (a) and (h) of section 2680 of title 28, United States Code, do not prohibit the bringing of a civil action on a claim against the United States which—

(1) is based upon—

(A) misrepresentation or deceit before January 1, 1978, on the part of the Commission or any employee thereof, or

(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof before January 1, 1978, which exercise, performance, or failure was grossly negligent; and

(2) is not made with respect to any agency action (as defined in section 551(13) of title 5, United States Code).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable

PRODUCT SAFETY INFORMATION AND RESEARCH

SEC. 5. (a) The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data, and information, relating to the

causes and prevention of death, injury, and illness associated with consumer products; and

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary.

(b) The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

(c) In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity).

(d) Whenever the Federal contribution for any information, research, or development activity authorized by this Act is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention.

PUBLIC DISCLOSURE OF INFORMATION

15 U.S.C. 2055

SEC. 6. (a) (1) Nothing contained in this Act shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this Act shall authorize the withholding of information by the Commission or any

officer or employee under its control from the duly authorized committees of the Congress.

(b) (1) Except as provided by paragraph (2) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith (unless the Commission finds out that the public health and safety requires a lesser period of notice), the Commission shall, to the extent practicable, notify, and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(2) Paragraph (1) (except for the last sentence thereof) shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 19 (relating to prohibited acts), or (B) information in the course of or concerning any administrative or judicial proceeding under this Act.

(c) The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) (1) The Commission may by rule, in accordance with this section and section 9, promulgate con-

sumer product safety standards. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(A) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

(B) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product. The requirements of such a standard (other than requirements relating to labeling, warnings, or instructions) shall, whenever feasible, be expressed in terms of performance requirements.

(2) No consumer product safety standard promulgated under this section shall require, incorporate, or reference any sampling plan. The preceding sentence shall not apply with respect to any consumer product safety standard or other agency action of the Commission under this Act (A) applicable to a fabric, related material, or product which is subject to a flammability standard or for which a flammability standard or other regulation may be promulgated under the Flammable Fabrics Act, or (B) which is or may be applicable to glass containers.

(b) A proceeding for the development of a consumer product safety standard under this Act shall be commenced by the publication in the Federal Register of a notice which shall—

(1) identify the product and the nature of the risk of injury associated with the product;

(2) state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard.

An invitation under paragraph (4)(B) shall specify the period of time in which the offeror of an accepted offer is to develop the proposed standard. The period specified shall be a period ending 150 days after the date the offer is accepted unless the Commission for good cause finds

(and includes such finding in the notice) that a different period is appropriate.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under this Act, would eliminate or reduce the unreasonable risk of injury associated with the product, then it may, in lieu of accepting an offer pursuant to subsection (d) of this section, publish such standard as a proposed consumer product safety rule.

(d) (1) Except as provided by subsection (c), the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (b) (4)(B), if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b), and will comply with regulations of the Commission under paragraph (3) of this subsection. The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

(2) If an offer is accepted under this subsection, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings. Payments under agreements entered into under this paragraph may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).

(3) The Commission shall prescribe regulations governing the development of proposed consumer product safety standards by persons whose offers are accepted under paragraph (1). Such regulations shall include requirements—

(A) that standards recommended for promulgation be suitable for promulgation under this Act, be supported by test data or such other documents or materials as the Commission may reasonably require to be developed, and (where appropriate) contain suitable test methods for measurement of compliance with such standards;

(B) for notice and opportunity by interested persons (including representatives of consumers and

consumer organizations) to participate in the development of such standards;

(C) for the maintenance of records, which shall be available to the public, to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development (including dissenting views and comments and information with respect to the need for such recommended standards), and such other matters as may be relevant to the evaluation of such recommended standards; and

(D) that the Commission and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards.

(e) (1) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard for a consumer product and if—

(A) the Commission does not, within 30 days after the date of publication of such notice, accept an offer to develop such a standard, or

(B) the development period (specified in paragraph (3)) for such standard ends, the Commission may develop a proposed consumer product safety rule respecting such product and publish such proposed rule.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard, the Commission may not, during the development period (specified in paragraph (3)) for such standard—

(A) publish a proposed rule applicable to the same risk of injury associated with such product, or

(B) develop proposals for such standard or contract with third parties for such development, unless the Commission determines that no offeror whose offer was accepted is making satisfactory progress in the development of such standard.

In any case in which the sole offeror whose offer is accepted under subsection (d)(1) of this section is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard, the Commission may independently proceed to develop proposals for such standard during the development period.

(3) For purposes of paragraph (2), the development period for any standard is a period (A) beginning on the

date on which the Commission first accepts an offer under subsection (d) (1) for the development of a proposed standard, and (B) ending on the earlier of—

(i) the end of the period specified in the notice of proceeding (except that the period specified in the notice may be extended if good cause is shown and the reasons for such extension are published in the Federal Register), or

(ii) the date on which it determines (in accordance with such procedures as it may by rule prescribe) that no offeror whose offer was accepted is able and willing to continue satisfactorily the development of the proposed standard which was the subject of the offer, or

(iii) the date on which an offeror whose offer was accepted submits such a recommended standard to the Commission.

(f) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard and if—

(1) no offer to develop such a standard is submitted to, or, if such an offer is submitted to the Commission, no such offer is accepted by, the Commission within a period of 60 days from the publication of such notice (or within such longer period as the Commission may prescribe by a notice published in the Federal Register stating good cause therefor), the Commission shall—

(A) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

(B) develop proposals for a consumer product safety rule for a consumer product identified in the subsection (b) notice and within a period of 150 days (or within such longer period as the Commission may prescribe by a notice published in the Federal Register stating good cause therefor) from the expiration of the 60-day (or longer) period—

(i) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

(ii) publish a proposed consumer product safety rule; or

(2) an offer to develop such a standard is submitted to and accepted by the Commission within the 60-day (or longer) period, then not later than 210 days (or such later time as the Commission may prescribe by notice published in the Federal Register stating good cause therefor) after the date of the acceptance of such offer the Commission shall take the action described in clause (i) or (ii) of paragraph (1)(B).

BANNED HAZARDOUS PRODUCTS

15 U.S.C. 2057

SEC. 8. Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may propose and, in accordance with section 9, promulgate a rule declaring such product a banned hazardous product.

ADMINISTRATIVE PROCEDURE APPLICABLE TO PROMULGATION OF CONSUMER PRODUCT SAFETY RULES

15 U.S.C. 2058

SEC. 9. (a) (1) Within 60 days after the publication under section 7 (c), (e)(1), or (f) or section 8 of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product if it makes the findings required under subsection (c), or

(B) withdraw by rule the applicable notice of proceeding if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules which have been proposed under section 7 (c), (e)(1), or (f) or section 8 shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(b) A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this Act. In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped

persons to determine the extent to which such persons may be adversely affected by such rule.

(c) (1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest; and

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product.

(d) (1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The effective date of a consumer product safety standard under this Act shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

(2) The Commission may by rule prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, so as to prevent such manufacturer from circumventing

the purpose of such consumer product safety rule. For purposes of this paragraph, the term "stockpiling" means manufacturing or importing a product between the date of promulgation of such consumer product safety rule and its effective date at a rate which is significantly greater (as determined under the rule under this paragraph) than the rate at which such product was produced or imported during a base period (prescribed in the rule under this paragraph) ending before the date of promulgation of the consumer product safety rule.

(e) The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 7 and 8, and subsections (a) through (d) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with subsection (a) (2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product. Section 11 shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule.

COMMISSION RESPONSIBILITY—PETITION FOR CONSUMER PRODUCT SAFETY RULE

15 U.S.C. 2059

SEC. 10. (a) Any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule.

(b) Such petition shall be filed in the principal office of the Commission and shall set forth (1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is necessary, and (2) a brief description of the substance of the consumer product safety rule or amendment thereof which it is claimed should be issued by the Commission.

(c) The Commission may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not such petition should be granted.

(d) Within 120 days after filing of a petition described in subsection (b), the Commission shall either grant or deny the petition. If the Commission grants such petition, it shall promptly commence an appropriate proceeding under section 7 or 8. If the Commission denies such petition it shall publish in the Federal Register its reasons for such denial.

(e) (1) If the Commission denies a petition made under this section (or if it fails to grant or deny such petition within the 120-day period) the petitioner may commence a civil action in a United States district court to compel the Commission to initiate a proceeding to take the action requested. Any such action shall be filed within 60 days after the Commission's denial of the petition, or (if the Commission fails to grant or deny the petition within 120 days after filing the petition) within 60 days after the expiration of the 120-day period.

(2) If the petitioner can demonstrate to the satisfaction of the court, by a preponderance of evidence in a de novo proceeding before such court, that the consumer product presents an unreasonable risk of injury, and that the failure of the Commission to initiate a rule-making proceeding under section 7 or 8 unreasonably exposes the petitioner or other consumers to a risk of injury presented by the consumer product, the court shall order the Commission to initiate the action requested by the petitioner.

(3) In any action under this subsection, the district court shall have no authority to compel the Commission to take any action other than the initiation of a rule-making proceeding in accordance with section 7 or 8.

(4) In any action under this subsection the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28, United States Code, or any other provision of law. For purposes of this paragraph and sections 11(c), 23(a), and 24, a reasonable attorney's fee is a fee (A) which is based upon (i) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this subsection, and (ii) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (B) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

(f) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(g) Subsection (e) of this section shall apply only with respect to petitions filed more than 3 years after the date of enactment of this Act.

JUDICIAL REVIEW OF CONSUMER PRODUCT SAFETY RULES

15 U.S.C. 2060

SEC. 11. (a) Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia or for the circuit in which such person, consumer, or organization resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28, United States Code.

For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 7, 8, or 9; the transcript required by section 9(a)(2) of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

(b) If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. A court may in the interest of justice include in such relief an award of the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4) and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28, United States Code, or any other provision of law. The consumer

product safety rule shall not be affirmed unless the Commission's findings under section 9(c) are supported by substantial evidence on the record taken as a whole.

(d) The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

(e) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

IMMINENT HAZARDS

SEC. 12. (a) The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2), or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this Act. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

15 U.S.C. 2061

(b) (1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the case of an action under subsection (a)(2)) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1), the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d) (1) Prior to commencing an action under subsection (a), the Commission may consult the Product Safety Advisory Council (established under section 28) with respect to its determination to commence such action, and request the Council's recommendations as to the type of temporary or permanent relief which may be necessary to protect the public.

(2) The Council shall submit its recommendations to the Commission within one week of such request.

(3) Subject to paragraph (2), the Council may conduct such hearing or offer such opportunity for the presentation of views as it may consider necessary or appropriate.

(e) (1) An action under subsection (a) (2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(f) Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

NEW PRODUCTS

15 U.S.C. 2062

SEC. 13. (a) The Commission may, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such product to the Commission before its distribution in commerce.

(b) For purposes of this section, the term "new consumer product" means a consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products and (2) as to which there exists a lack of information adequate to determine the safety of such product in use by consumers.

PRODUCT CERTIFICATION AND LABELING

SEC. 14. (a) (1) Every manufacturer of a product which is subject to a consumer product safety standard under this Act and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.

15 U.S.C. 2063

(2) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufacturers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required by paragraph (1) of this subsection, and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1) to issue a certificate with respect to such product.

(b) The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this Act and for which a certificate is required under subsection (a). Any test or testing program on the basis of which a certificate is issued under subsection (a) may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

(c) The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(3) In the case of a consumer product subject to a consumer product safety rule, a certification that

the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded.

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

15 U.S.C. 2064

SEC. 15. (a) For purposes of this section, the term "substantial product hazard" means—

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule; or

(2) contains a defect which could create a substantial product hazard described in subsection (a) (2),

shall immediately inform the Commission of such failure to comply or of such defect, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

(c) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(1) To give public notice of the defect or failure to comply.

(2) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(3) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(d) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f)) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects:

(1) To bring such product into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product.

(2) To replace such product with a like or equivalent product which complies with the applicable consumer product safety rule or which does not contain the defect.

(3) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (c), or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(e) (1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(f) An order under subsection (c) or (d) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

(g)(1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 27(b)(7)), or the Attorney General may, in accordance with section 12(e)(1), apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

(3) The amount in controversy requirement of section 1331 of title 28, United States Code, does not apply with respect to the jurisdiction of a district court of the United States to issue or extend a preliminary injunction under this subsection.

INSPECTION AND RECORDKEEPING

SEC. 16. (a) For purposes of implementing this Act, or rules or orders prescribed under this Act, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

15 U.S.C. 2065

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or (B) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this Act, or to determine compliance with rules or orders prescribed under this Act. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this Act and rules under this Act.

IMPORTED PRODUCTS

SEC. 17. (a) Any consumer product offered for importation into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) shall be refused admission into such customs territory if such product—

15 U.S.C. 2086

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by section 14, or is not labeled in accordance with regulations under section 14(c);

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 12;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 15(a)(2)); or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g).

(b) The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 12 with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 of the United States Code with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a), such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

(c) If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a)) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) All actions taken by an owner or consignee to modify such product under subsection (c) shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 22(b) if it is not so redelivered.

(e) Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not

export the product within a reasonable time, the Department of the Treasury may destroy the product.

(f) All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section (the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(g) The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this Act and the Commission's rules with respect to such requirements.

EXPORTS

SEC. 18. This Act shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless such consumer product is in fact distributed in commerce for use in the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

15 U.S.C. 2067

PROHIBITED ACTS

SEC. 19. (a) It shall be unlawful for any person to—

15 U.S.C. 2068

(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this Act;

(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this Act;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or

inspection, as required under this Act or rule thereunder;

(4) fail to furnish information required by section 15(b);

(5) fail to comply with an order issued under section 15 (c) or (d) (relating to notification, and to repair, replacement, and refund, and to prohibited acts);

(6) fail to furnish a certificate required by section 14 or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 14(c) (relating to labeling);

(7) fail to comply with any rule under section 9(d)(2) (relating to stockpiling);

(8) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

(9) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data).

(b) Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 14(a) to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

CIVIL PENALTIES

15 U.S.C. 2069

SEC. 20. (a) (1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed \$2,000 for each such violation. Subject to paragraph (2), a violation of section 19(a) (1), (2), (4), (5), (6), (7), (8), or (9) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations. A violation of section 19(a) (3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a)—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(b) Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(c) As used in the first sentence of subsection (a) (1) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

CRIMINAL PENALTIES

SEC. 21. (a) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission shall be fined not more than \$50,000 or be imprisoned not more than one year, or both.

15 U.S.C. 2070

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 19, and who has knowledge of notice of noncompliance received by the corporation from the Commission, shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

INJUNCTIVE ENFORCEMENT AND SEIZURE

SEC. 22. (a) The United States district courts shall have jurisdiction to take the following action:

15 U.S.C. 2071

(1) Restrain any violation of section 19.

(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d).

(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule. Such actions may be brought by the Commission (without regard to section 27(b)(7)(A)) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product—

(1) which fails to conform with an applicable consumer product safety rule, or

(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 15(d),

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

SUITS FOR DAMAGES BY PERSONS INJURED

15 U.S.C. 2072

SEC. 23. (a) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions of section 1331 of title 28, United States Code as to the amount in controversy, shall recover damages sustained, and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4)) and reasonable expert witnesses' fees.

(b) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

**PRIVATE ENFORCEMENT OF PRODUCT SAFETY RULES AND OF
SECTION 15 ORDERS**

SEC. 24. Any interested person may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 15, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this Act. In any action under this section the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4)) and reasonable expert witnesses' fees.

15 U.S.C. 2073

EFFECT ON PRIVATE REMEDIES

SEC. 25. (a) Compliance with consumer product safety rules or other rules or orders under this Act shall not relieve any person from liability at common law or under State statutory law to any other person.

15 U.S.C. 2074

(b) The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c) Subject to sections 6(a)(2) and 6(b) but notwithstanding section 6(a)(1), (1) any accident or investigation report made under this Act by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information.

EFFECT ON STATE STANDARDS

SEC. 26. (a) Whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any

15 U.S.C. 2075

provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

(b) Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this Act if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this Act.

(c) Upon application of a State or political subdivision of a State, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this Act if the State or political subdivision standard or regulation—

(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this Act, and

(2) does not unduly burden interstate commerce. In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this Act for such consumer product.

ADDITIONAL FUNCTIONS OF COMMISSION

SEC. 27. (a) The Commission may, by one or more of its members or by such agents or agency as it may designate,

nate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same matter. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665 (b));

(7) to—

(A) initiate, prosecute, defend, or appeal (other than to the Supreme Court of the United States), through its own legal representative and in the name of the Commission, any civil action if the Commission makes a written request to the Attorney General for representation in such civil action and the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, and

(B) initiate, prosecute, or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action,

for the purpose of enforcing the laws subject to its jurisdiction;

(8) to lease buildings or parts of buildings in the District of Columbia, without regard to the Act of March 3, 1877 (40 U.S.C. 34), for the use of the Commission; and

(9) to delegate any of its functions or powers, other than the power to issue subpoenas under paragraph (3), to any officer or employee of the Commission.

(c) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission (subject to subsection (b) (7)) or by the Attorney General, in case of refusal to obey a subpoena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(e) The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this Act.

(f) For purposes of carrying out this Act, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

(g) The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this Act.

(h) The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this Act.

(i) (1) Each recipient of assistance under this Act pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and dis-

position by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this Act under other than competitive bidding procedures.

(j) The Commission shall prepare and submit to the President and the Congress at the beginning of each regular session of Congress a comprehensive report on the administration of this Act for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this Act in order of priority;

(5) an analysis and evaluation of public and private consumer product safety research activities;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this Act;

(7) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this Act, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission; and

(10) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this Act.

(k) (1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(l) (1) Except as provided in paragraph (2)—

(A) the Commission shall transmit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives each consumer product safety rule proposed after the date of the enactment of this subsection and each regulation proposed by the Commission after such date under section 2 or 3 of the Federal Hazardous Substances Act, section 3 of the Poison Prevention Packaging Act of 1970, or section 4 of the Flammable Fabrics Act; and

(B) no consumer product safety rule and no regulation under a section referred to in subparagraph (A) may be adopted by the Commission before the thirtieth day after the date the proposed rule or regulation upon which such rule or regulation was based was transmitted pursuant to subparagraph (A).

(2) Paragraph (1) does not apply with respect to a regulation under section 2(q) of the Federal Hazardous Substances Act respecting a hazardous substance the distribution of which is found under paragraph (2) of such section to present an imminent hazard or a regulation under section 3(e) of such Act respecting a toy or other article intended for use by children the distribution of which is found under paragraph (2) of such section to present an imminent hazard.

PRODUCT SAFETY ADVISORY COUNCIL

SEC. 28. (a) The Commission shall establish a Product Safety Advisory Council which it may consult before prescribing a consumer product safety rule or taking other action under this Act. The Council shall be ap-

pointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

- (1) five members shall be selected from governmental agencies including Federal, State, and local governments;
- (2) five members shall be selected from consumer product industries including at least one representative of small business; and
- (3) five members shall be selected from among consumer organizations, community organizations, and recognized consumer leaders.

(b) The Council shall meet at the call of the Commission, but not less often than four times during each calendar year.

(c) The Council may propose consumer product safety rules to the Commission for its consideration and may function through subcommittees of its members. All proceedings of the Council shall be public, and a record of each proceeding shall be available for public inspection.

(d) Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule, including traveltine, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

COOPERATION WITH STATES AND WITH OTHER FEDERAL AGENCIES

SEC. 29. (a) The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this Act. In implementing such program the Commission may—

15 U.S.C. 2078

- (1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this Act which such States or localities may be able and willing to pro-

vide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.

(b) In determining whether such proposed State and local programs are appropriate in implementing the purposes of this Act, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this Act. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

(e) The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by any officer, employee, or agent of the Commission only if (1) information which under section 6(a)(2) is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any

information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 6(b).

TRANSFERS OF FUNCTIONS

SEC. 30. (a) The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and the Poison Prevention Packaging Act of 1970 are transferred to the Commission. The functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.), to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 (15 U.S.C. 1211) are transferred to the Commission.

(d) A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act. Such a rule shall identify the risk of injury proposed to be regulated under this Act and shall be promulgated in accordance with section 553 of title 5, United States Code; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.

(e)(1)(A) All personnel, property, records, obligations, and commitments which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Bu-

reau of Standards. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this Act to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970 (84 Stat. 1676; 42 U.S.C. 215 nt).

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official

capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department.

LIMITATION ON JURISDICTION

SEC. 31. The Commission shall have no authority under this Act to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Atomic Energy Act of 1954; or the Clean Air Act. The Commission shall have no authority under this Act to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355 (1) and (2) of the Public Health Service Act) if such risk of injury may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act.

15 U.S.C. 2080

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are authorized to be appropriated for the purposes of carrying out the provisions of this Act (other than the provisions of section 27(h) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 30, not to exceed—

- (1) \$51,000,000 for the fiscal year ending June 30, 1976;
- (2) \$14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976;
- (3) \$60,000,000 for the fiscal year ending September 30, 1977; and
- (4) \$68,000,000 for the fiscal year ending September 30, 1978.

(b) (1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities de-

15 U.S.C. 2081

scribed in section 27(h); except that no appropriation shall be made for any such planning or construction involving an expenditure in excess of \$100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval the Commission shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

- (A) a brief description of the facility to be planned or constructed;
- (B) the location of the facility, and an estimate of the maximum cost of the facility;
- (C) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and
- (D) a statement of justification of the need for such facility.

(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Commission, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost.

(c) No funds appropriated under subsection (a) may be used to pay any claim described in section 4(i) whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, United States Code, or under any other provision of law.

SEPARABILITY

^{15 U.S.C. 2051}
note

SEC. 33. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE

^{15 U.S.C. 2051}
note

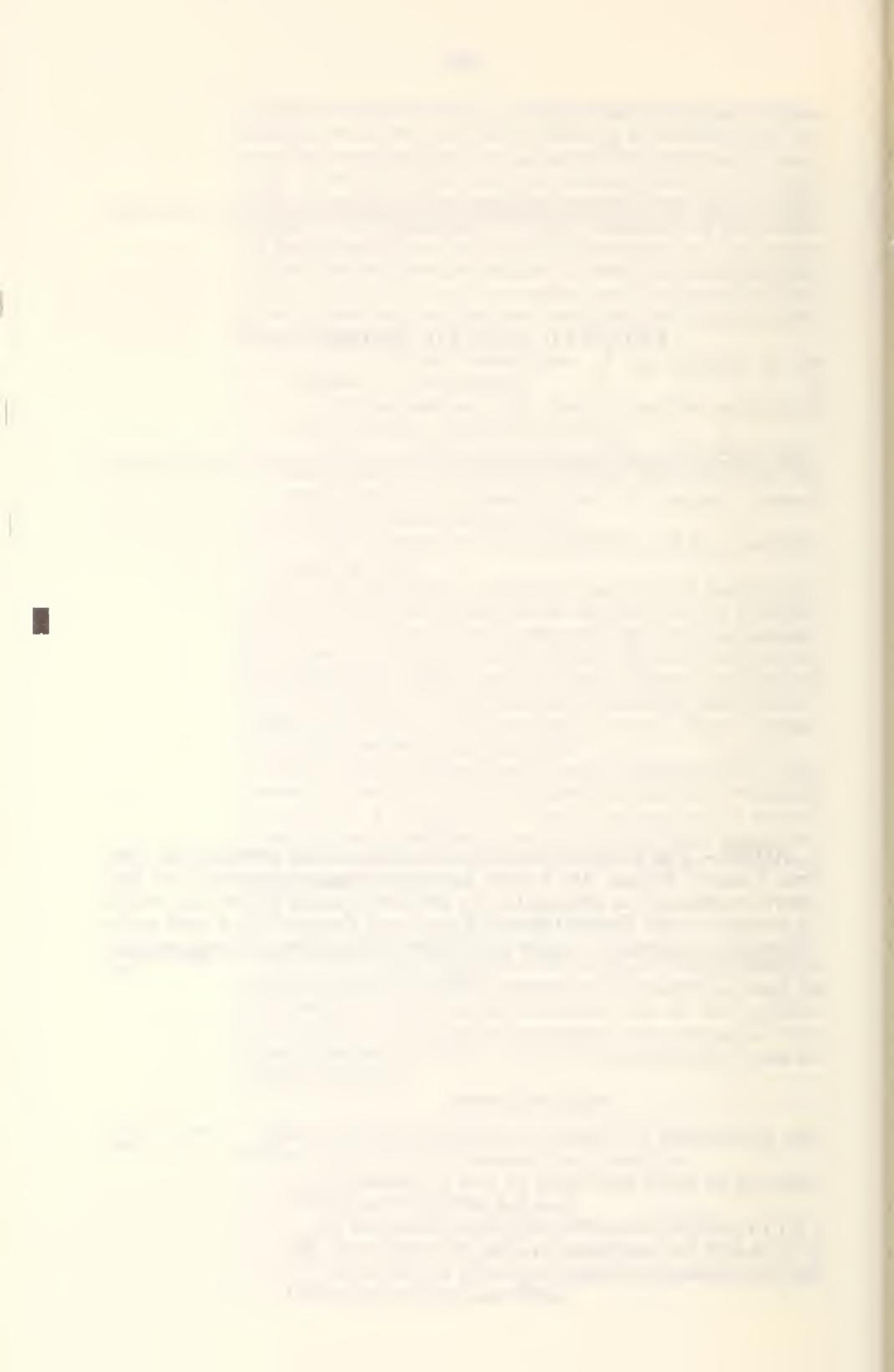
SEC. 34. This Act shall take effect on the sixtieth day following the date of its enactment, except—

- (1) sections 4 and 32 shall take effect on the date of enactment of this Act, and
- (2) section 30 shall take effect on the later of (A) 150 days after the date of enactment of this Act, or (B) the date on which at least three members of the Commission first take office.

FEDERAL CAUSTIC POISON ACT

NOTE.—The Federal Hazardous Substances Act repealed the Federal Caustic Poison Act except for any “dangerous caustic or corrosive substance” as defined by the Federal Caustic Poison Act which is subject to the Federal Food, Drug, and Cosmetic Act and not a “hazardous substance” under the Federal Hazardous Substances Act.

(103)



FEDERAL CAUSTIC POISON ACT

AN ACT To safeguard the distribution and sale of certain dangerous caustic or corrosive acids, alkalies, and other substances in interstate and foreign commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the Federal Caustic Poison Act.

DEFINITIONS

SEC. 2. As used in this act, unless the context otherwise requires—

(a) The term “dangerous caustic or corrosive substance” means:

(1) Hydrochloric acid and any preparation containing free or chemically unneutralized acid (HCl) in a concentration of 10 per centum or more;

(2) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H_2SO_4) in a concentration of 10 per centum or more;

(3) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of 5 per centum or more;

(4) Carbolic acid (C_6H_5OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of 5 per centum or more;

(5) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of 10 per centum or more;

(6) Any salt of oxalic acid and any preparation containing any such salt in a concentration of 10 per centum or more;

(7) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of 20 per centum or more;

(8) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield 10 per centum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime;

(9) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of 10 per centum or more;

(10) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of 10 per centum or more;

(11) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO_3) in a concentration of 5 per centum or more; and

(12) Ammonia water and any preparation containing free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and "hartshorn," in a concentration of 5 per centum or more.¹

(b) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance not bearing a conspicuous, easily legible label or sticker containing:

(1) The common name of the substance;

(2) The name and place of business of the manufacturer, packer, seller, or distributor;

(3) The word "poison," running parallel with the main body of reading matter on the label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24-point size unless there is on the label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker; and

(4) Directions for treatment in case of accidental personal injury by any dangerous caustic or corrosive substance, except that such directions need not appear on labels or stickers, on parcels, packages, or containers at the time of shipment or of delivery for shipment by manufacturers and wholesalers for other than household use.

(c) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

(d) This act is not to be construed as modifying or limiting in any way the right of any person to manufacture, pack, ship, sell, barter, and distribute dangerous caustic or corrosive substances in parcels, packages, or containers, labeled as required by this act.

¹ For the purpose of determining whether an article containing ammonia is subject to the Federal Caustic Poison Act, the ammonia content is to be calculated as NH_3 . § 3.700 *Definition of ammonia under Federal Caustic Poison Act*, Federal Register, November 30, 1957.

PROHIBITION AGAINST MISBRANDING SHIPMENTS

SEC. 3. No person shall ship or deliver for shipment in interstate or foreign commerce or receive from shipment in such commerce any dangerous caustic or corrosive substance for sale or exchange, or sell or offer for sale any such substance in any Territory or possession or in the District of Columbia, in a misbranded parcel, package, or container suitable for household use; except that the preceding provisions of this section shall not apply—

(a) To any regularly established common carrier shipping or delivering for shipment, or receiving from shipment, any such substance in the ordinary course of its business as a common carrier; nor

(b) To any person in respect of any such substance shipped or delivered for shipment, or received from shipment, for export to any foreign country, in a parcel package, or container branded in accordance with the specifications of a foreign purchaser and in accordance with the laws of the foreign country;

(c) To any dealer when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the article is not misbranded within the meaning of this act. This guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this act.

LIBEL FOR CONDEMNATION PROCEEDINGS

SEC. 4. (a) Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use shall be liable to be proceeded against in the district court of the United States for any judicial district in which the substance is found and to be seized for confiscation by a process of libel for condemnation, if such substance is being:

- (1) Shipped in interstate or foreign commerce; or
- (2) Held for sale or exchange after having so shipped;

or

- (3) Held for sale or exchange in any Territory or possession or in the District of Columbia.

(b) If such substance is condemned as misbranded by the court it shall be disposed of in the discretion of the court:

(1) By destruction.

(2) By sale. The proceeds of the sale, less legal costs and charges, shall be paid into the Treasury as miscellaneous receipts. Such substance shall not be sold in any jurisdiction contrary to the provisions of this act or the laws of such jurisdiction, and the court may require the purchaser at any such sale to label such substance in compliance with law before the delivery thereof.

(3) By delivery to the owner thereof upon the payment of legal costs and charges and execution and delivery of a good and sufficient bond to the effect that such substance will not be sold or otherwise disposed of in any jurisdiction contrary to the provisions of this act or the laws of such jurisdiction.

(c) Proceedings in such libel cases shall conform, as nearly as may be, to suits in rem in admiralty, except that either party may demand trial by jury on any issue of fact if the value in controversy exceeds \$20. In case of a jury trial the verdict of the jury shall have the same effect as a finding of the court upon the facts. All such proceedings shall be at the suit and in the name of the United States.

EXCLUSION OF MISBRANDED IMPORTS

SEC. 5. (a) Whenever in the case of any dangerous caustic or corrosive substance being offered for importation the Secretary of Health, Education, and Welfare has reason to believe that such substance is being shipped in interstate or foreign commerce in violation of section 3, he shall give due notice and opportunity for hearing thereon to the owner or consignee and certify such fact to the Secretary of the Treasury, who shall thereupon (1) refuse admission and delivery to the consignee of such substance, or (2) deliver such substance to the consignee pending examination, hearing, and decision in the matter, on the execution of a penal bond to the amount of the full invoice value of such substance, together with the duty thereon, if any, and to the effect that on refusal to return such substance for any cause to the Secretary of the Treasury when demanded for the purpose of excluding it from the country or for any other purpose, the consignee shall forfeit the full amount of the bond.

(b) If, after proceeding in accordance with subdivision (a), the Secretary of Health, Education, and Welfare is satisfied that such substance being offered for importation was shipped in interstate or foreign commerce in violation of any provision of this act, he shall certify the fact to the Secretary of the Treasury, who shall thereupon notify the owner or consignee and cause the sale

or other disposition of such substance refused admission and delivery or entered under bond, unless it is exported by the owner or consignee or labeled by him so as to conform to the law within 3 months from the date of such notice, under such regulations as the Secretary of the Treasury may prescribe. All charges for storage, cartage, or labor on any such substance refused admission or delivery or entered upon bond shall be paid by the owner or consignee. In default of such payment such charges shall constitute a lien against any future importations made by such owner or consignee.

REMOVAL OF LABELS

SEC. 6. No person shall alter, mutilate, destroy, obliterate, or remove any label or sticker required by this act to be placed on any dangerous caustic or corrosive substance, if such substance is being—

- (a) Shipped in interstate or foreign commerce; or
- (b) Held for sale or exchange after having been so shipped; or
- (c) Held for sale or exchange in any Territory or possession or by the District of Columbia.

PENALTIES

SEC. 7. Any person violating any provision of section 3 or 6 shall upon conviction thereof be punished by a fine of not more than \$200 or imprisonment for not more than 90 days, or by both.

INSTITUTION OF LIBEL FOR CONDEMNATION AND CRIMINAL PROCEEDINGS

SEC. 8. It shall be the duty of each United States district attorney to whom the Secretary of Health, Education, and Welfare shall report any violation of section 3 or 6 of this act or to whom any health, medical, or drug officer or agent of any State, Territory, or possession, or of the District of Columbia, presents satisfactory evidence of any such violation, to cause libel for condemnation and criminal proceedings under sections 4 and 7 to be commenced and prosecuted in the proper courts of the United States, without delay, for the enforcement of the condemnation and penalties provided in such sections.

ENFORCEMENT OF ACT

SEC. 9. (a) Except as otherwise specifically provided in this act, the Secretary of Health, Education, and Welfare shall enforce its provisions.

(b) For enforcing the provisions of sections 4, 5, and 7, the Secretary of Health, Education, and Welfare may

cause investigations, inspections, analyses, and tests to be made and samples to be collected, of any dangerous caustic or corrosive substance. The Department of Health, Education, and Welfare shall pay to the person entitled, upon his request, the reasonable market value of any such sample taken. If it appears from the inspection, analysis, or test of any dangerous caustic or corrosive substance that such substance is in a misbranded package, parcel, or container suitable for household use, the Secretary of Health, Education, and Welfare shall cause notice thereof to be given to any person who may be liable for any violation of section 3 or 6 in respect of such substance. Any person so notified shall be given an opportunity to be heard under regulations prescribed by the Secretary of Health, Education, and Welfare. If it appears that such person has violated the provisions of section 3 or 6 the Secretary of Health, Education, and Welfare shall at once certify the facts to the proper United States district attorney, with a copy of the results of the inspection, analysis, or test duly authenticated under oath by the person making such inspection, analysis, or test.

(c) For the enforcement of his functions under this act the Secretary of Health, Education, and Welfare is authorized:

(1) To prescribe and promulgate such regulations as may be necessary;

(2) To cooperate with any department or agency of the Government, with any State, Territory, or possession, or with the District of Columbia, or with any department, agency, or political subdivision thereof, or with any person;

(3) Subject to the civil-service laws to appoint and, in accordance with the Classification Act of 1949, to fix the salaries of such officers and employees as may be required for the execution of the functions of the Secretary of Health, Education, and Welfare under this act and as may be provided for by the Congress from time to time;

(4) To make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals) as may be required for the execution of the functions vested in the Secretary of Health, Education, and Welfare by this act and as may be provided for by the Congress from time to time;

(5) To give notice, by publication in such manner as the Secretary of Health, Education, and Welfare may by regulation prescribe, of the judgment of the court in any case under the provisions of this act.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

TIME OF TAKING EFFECT

SEC. 11. This act shall take effect upon its passage; but no penalty or condemnation shall be enforced for any violation of the act occurring within 6 months after its passage.

APPLICATION TO EXISTING LAW

SEC. 12. The provisions of this act shall be held to be in addition to and not in substitution for the provisions of the following acts—

(a) The Federal Food, Drug, and Cosmetic Act of June 25, 1938, as amended;

(b) The Federal Insecticide, Fungicide, and Rodenticide Act of June 25, 1947;

(c) The act entitled "An act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes," approved May 7, 1906, as amended.

Approved March 4, 1927.

MAGNUSON-MOSS WARRANTY—FEDERAL
TRADE COMMISSION IMPROVEMENT ACT

(113)



MAGNUSON-MOSS WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENT ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Magnuson-Moss Warranty—Federal Trade Commission Improvement Act".

(115)

TITLE I—CONSUMER PRODUCT WARRANTIES

DEFINITIONS

15 U.S.C. 2301

SEC. 101. For the purposes of this title:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a

supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 108 and 104(a)) in connection with the sale by a supplier of a consumer product.

(8) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

- (A) repair,
- (B) replacement, or
- (C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

- (A) between a place in a State and any place outside thereof, or

- (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

WARRANTY PROVISIONS

15 U.S.C. 2302

SEC. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

- (1) The clear identification of the names and addresses of the warrantors.
- (2) The identity of the party or parties to whom the warranty is extended.
- (3) The products or parts covered.
- (4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.
- (5) A statement of what the consumer must do and expenses he must bear.
- (6) Exceptions and exclusions from the terms of the warranty.
- (7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.
- (8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.
- (9) A brief, general description of the legal remedies available to the consumer.
- (10) The time at which the warrantor will perform any obligations under the warranty.
- (11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.
- (12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.
- (13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

(b) (1) (A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this title (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(c) No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

(d) The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

(e) The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$5.

DESIGNATION OF WARRANTIES

15 U.S.C. 2303

SEC. 103. (a) Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 104 of this Act, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 104 of this Act, then it shall be conspicuously designated a "limited warranty".

(b) Sections 102, 103, and 104 shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

(c) In addition to exercising the authority pertaining to disclosure granted in section 102 of this Act, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

(d) The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than \$10 and which are not designated "full (statement of duration) warranties".

FEDERAL MINIMUM STANDARDS FOR WARRANTY

15 U.S.C. 2304

SEC. 104. (a) In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 108(b), such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a

refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

(b) (1) In fulfilling the duties under subsection (a) respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a), that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in section 104(a) of this Act and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) extend from the warrantor to each person who is a consumer with respect to the consumer product.

(c) The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

(d) For purposes of this section and of section 102(c), the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the

remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

(e) If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 110(d) or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

FULL AND LIMITED WARRANTING OF A CONSUMER PRODUCT

15 U.S.C. 2305

SEC. 105. Nothing in this title shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

SERVICE CONTRACTS

15 U.S.C. 2306

SEC. 106. (a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this title shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

DESIGNATION OF REPRESENTATIVES

15 U.S.C. 2307

SEC. 107. Nothing in this title shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

15 U.S.C. 2308

SEC. 108. (a) No supplier may disclaim or modify (except as provided in subsection (b)) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

(b) For purposes of this title (other than section 104 (a)(2)), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

(c) A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this title and State law.

COMMISSION RULES

SEC. 109. (a) Any rule prescribed under this title shall be prescribed in accordance with section 553 of title 5, United States Code; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 18(e) of the Federal Trade Commission Act (as amended by section 202 of this Act) in the same manner as rules prescribed under section 18 (a)(1)(B) of such Act, except that section 18(e)(3)(B) of such Act shall not apply.

15 U.S.C. 2309

(b) The Commission shall initiate within one year after the date of enactment of this Act a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this title, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this title, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

REMEDIES

SEC. 110. (a) (1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

15 U.S.C. 2310

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this title applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2).

If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this title or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d), the court may invalidate any such procedure if it finds that such procedure is unfair.

(b) It shall be a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any person to fail to comply with any requirement imposed on such person by this title (or a rule thereunder) or to violate any prohibition contained in this title (or a rule thereunder).

(c)(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this title or from violating any prohibition contained in this title.

Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 5 of the Federal Trade Commission Act is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

(d) (1) Subject to subsections (a) (3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of \$25;

(B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

(e) No action (other than a class action or an action respecting a warranty to which subsection (a)(3) applies) may be brought under subsection (d) for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) applies) brought under subsection (d) for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

(f) For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

EFFECT ON OTHER LAWS

15 U.S.C. 2311

SEC. 111. (a) (1) Nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined therein as an Antitrust Act.

(2) Nothing in this title shall be construed to repeal, invalidate, or supersede the Federal Seed Act (7 U.S.C. 1551-1611) and nothing in this title shall apply to seed for planting.

(b) (1) Nothing in this title shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this title (other than sections 108 and 104(a) (2) and (4)) shall (A) affect the liability of, or

impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

(c)(1) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 102, 103, and 104 (and rules implementing such sections), and

(C) which is not identical to a requirement of section 102, 103, or 104 (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 109) that any requirement of such State covering any transaction to which this title applies (A) affords protection to consumers greater than the requirements of this title and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

(d) This title (other than section 102(c)) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this title.

EFFECTIVE DATE

SEC. 112. (a) Except as provided in subsection (b) of this section, this title shall take effect 6 months after the date of its enactment but shall not apply to consumer products manufactured prior to such date.

15 U.S.C. 2312

(b) Section 102(a) shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this title.

(c) The Commission shall promulgate rules for initial implementation of this title as soon as possible after the date of enactment of this Act but in no event later than one year after such date.

TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS¹

LEGISLATIVE HISTORY

HOUSE REPORTS: No. 93-1107 accompanying H.R. 7917 (Committee on Interstate and Foreign Commerce) and No. 93-1606 (committee of conference).

SENATE REPORTS: No. 93-151 (Committee on Commerce) and No. 93-280 (Committee on Banking, Housing and Urban Affairs) and No. 93-1408 (committee of conference).

CONGRESSIONAL RECORD:

Vol. 119 (1973) : Sept. 12, considered and passed Senate.

Vol. 120 (1974) :

Sept. 19, considered and passed House, amended, in lieu of H.R. 7917.

Dec. 18, Senate agreed to conference report.

Dec. 19, House agreed to conference report.

¹ This title made amendments to the Federal Trade Commission Act.

FEDERAL TRADE COMMISSION ACT

(129)

1.1.1. *Microbial Ecology*

Microbial ecology is the study of the interactions between microorganisms and their environment. It includes the study of the distribution, abundance, and activity of microorganisms in various environments, as well as the relationships between different microorganisms. Microbial ecology is a multidisciplinary field that combines principles from microbiology, ecology, and environmental science. It is concerned with understanding how microorganisms interact with their environment, how they affect their environment, and how they are affected by their environment. Microbial ecology is important for understanding the role of microorganisms in the environment, and for developing strategies to manage and protect the environment.

1.1.2. *Microbial Physiology*

Microbial physiology is the study of the processes and mechanisms that allow microorganisms to survive and grow in their environment. It includes the study of the metabolism, energy production, and regulation of microorganisms. Microbial physiology is a multidisciplinary field that combines principles from microbiology, biochemistry, and molecular biology. It is concerned with understanding how microorganisms obtain energy, how they produce energy, and how they regulate their metabolism. Microbial physiology is important for understanding the biology of microorganisms, and for developing strategies to control and manipulate them.

1.1.3. *Microbial Genetics*

Microbial genetics is the study of the genetic material of microorganisms, and the way it is used to control and regulate their growth and development. It includes the study of the structure and function of microbial genomes, and the way they are passed on from one generation to the next. Microbial genetics is a multidisciplinary field that combines principles from microbiology, molecular biology, and genetics. It is concerned with understanding how microorganisms inherit and express their genetic material, and how they use it to survive and grow. Microbial genetics is important for understanding the biology of microorganisms, and for developing strategies to control and manipulate them.

1.1.4. *Microbial Biotechnology*

Microbial biotechnology is the application of microbial biology to solve problems in industry, agriculture, and medicine. It includes the use of microorganisms to produce useful products, such as antibiotics, enzymes, and vaccines, and the use of microorganisms to break down pollutants and remediate environmental damage. Microbial biotechnology is a multidisciplinary field that combines principles from microbiology, biochemistry, and engineering. It is concerned with understanding how microorganisms can be used to solve specific problems, and how they can be manipulated to produce desired products. Microbial biotechnology is important for solving practical problems, and for advancing the field of microbiology.

FEDERAL TRADE COMMISSION ACT

CHAP. 311.—An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed: *Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find

15 U.S.C. 41

15 U.S.C. 42

necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

15 U.S.C. 43

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

15 U.S.C. 44

SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” shall be deemed to include any company,

trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February 14,¹ 1887, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

SEC. 5. (a) (1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

15 U.S.C. 45

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a

¹ So in original.

proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate circuit court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may

obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

(d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Such proceedings in the circuit court of appeals shall be given precedence over other cases pending

therein, and shall be in every way expedited. No order of the Commission or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Anti-trust Acts.

(f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or certified mail as aforesaid shall be proof of the service of the same.

(g) An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the circuit court of appeals, and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the circuit court of appeals; or

(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

(h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless

within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) If the order of the Commission is modified or set aside by the circuit court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the circuit court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) If the Supreme Court orders a rehearing; or if the case is remanded by the circuit court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) (1) (A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corpo-

ration which violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided) is not an unfair or deceptive act or practice in violation of subsection (a)(1) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(C) (1) In the case of a violation through continuing failure to comply with a rule or with section 5(a)(1), each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo.

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose

business affects commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) To require, by general or special orders, persons, partnerships, and corporations engaged in or whose business affects commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and (except as provided in section 18(a)(2) of this Act) to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Provided, That the exception of "banks and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in clauses (a) and (b) of this section, shall not be construed to limit the Commission's authority to gather and compile information to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged, or is engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce.

15 U.S.C. 47

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

15 U.S.C. 48

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

15 U.S.C. 49

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded

against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any persons, partnership, or corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such persons, partnership, or corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such persons, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery

of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

15 U.S.C. 51

SEC. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

15 U.S.C. 52

(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an affect upon commerce of food, drugs, devices, or cosmetics.

(b) The dissemination or the causing to be disseminated of any false advertisement with the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 5.

SEC. 13. (a) Whenever the Commission has reason to believe—

15 U.S.C. 53

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dis-

semination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(b) Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(c) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.

SEC. 14. (a) Any person, partnership, or corporation who violates any provision of section 12 (a) shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act approved March 4, 1907, as amended, shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

SEC. 15. For the purposes of sections 12, 13, and 14—

(a) (1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with re-

spect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine."

(b) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) The term "drug" means (1) articles recognized in the official United State Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(d) The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of

man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(e) The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

(f) For the purposes of this section and section 407 of the Federal Food, Drug, and Cosmetic Act, as amended, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

SEC. 16. (a) (1) Except as otherwise provided in paragraph (2) or (3), if—

15 U.S.C. 56

(A) before commencing, defending, or intervening in, any civil action involving this Act (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 13 of this Act (relating to injunctive relief);

(B) under section 19 of this Act (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 5 of this Act; or

(D) under the second paragraph of section 9 of this Act (relating to enforcement of a subpoena) and under the fourth paragraph of such section (relating to compliance with section 6 of this Act);

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3) (A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken,

the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, United States Code, or any other provision of law.

(b) Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this Act, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

SEC. 17. If any provision of this Act, or the application thereof to any person, partnership, corporation, or circumstance, is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

15 U.S.C. 57

SEC. 18. (a) (1) The Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of this Act), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 5(a)(1)). Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this Act, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

(b) When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (1) publish a notice of proposed rulemaking stating with par-

15 U.S.C. 57a

ticularity the reason for the proposed rule; (2) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (3) provide an opportunity for an informal hearing in accordance with subsection (c); and (4) promulgate, if appropriate, a final rule based on the matter in the rule-making record (as defined in subsection (e)(1)(B)), together with a statement of basis and purpose.

(c) The Commission shall conduct any informal hearings required by subsection (b)(3) of this section in accordance with the following procedure:

(1) Subject to paragraph (2) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submissions (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (2)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(2) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (1) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

"(3)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (1) and (2) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

"(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall

not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(4) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

(d) (1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a) (1) (B) shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2) (A) The term "Commission" as used in this subsection and subsections (b) and (c) includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a) (1) (B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a) (1) (B) takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 5(a) (1) of this Act, unless the Commission otherwise expressly provides in such rule.

(e) (1) (A) Not later than 60 days after a rule is promulgated under subsection (a) (1) (B) by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The provisions of section 2112 of title 28, United States Code, shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term "rulemak-

ing record" means the rule, its statement of basis and purpose, the transcript required by subsection (c)(4), any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule's statement of basis of purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of title 5, United States Code (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission's action is not supported by substantial evidence in the rule-making record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

(i) a Commission determination under subsection (c) that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or

(ii) a Commission rule or ruling under subsection (c) limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rulemaking proceeding taken as a whole.

The term "evidence," as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(5) (A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeals shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a) (1) (B), if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3) (B) (i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3) (B). Section 706 (2) (E) of title 5, United States Code, shall not apply to any rule promulgated under subsection (a) (1) (B). The contents and adequacy of any statement required by subsection (b) (4) shall not be subject to judicial review in any respect.

(f) (1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks, each agency specified in paragraph (2) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks subject to its jurisdiction. The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a) (1) (B) of this section, then within 60 days after such rule takes effect such Board shall promulgate substantially similar regulations prohibiting acts or practices of banks which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless such Board finds that (A) such acts or practices of banks are not unfair or deceptive, or (B) that implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

(2) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A)) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

(3) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

(4) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

(5) Each agency exercising authority under this subsection shall transmit to the Congress not later than March 15 of each year a detailed report on its activities under this paragraph during the preceding calendar year.

(g) (1) Any person to whom a rule under subsection (a) (1) (B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a) (1) (B) to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of title 5, United States Code, shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall

stay the applicability of such rule under subsection (a) (1)(B).

(h) (1) The Commission may, pursuant to rules prescribed by it, provide compensation for reasonable attorneys fees, expert witness fees, and other costs of participating in a rulemaking proceeding under this section to any person (A) who has, or represents, an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and (B) who is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceeding.

(2) The aggregate amount of compensation paid under this subsection in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either (A) would be regulated by the proposed rule, or (B) represent persons who would be so regulated, may not exceed 25 percent of the aggregate amount paid as compensation under this subsection to all persons in such fiscal year.

(3) The aggregate amount of compensation paid to all persons in any fiscal year under this subsection may not exceed \$1,000,000.

Sec. 19. (a) (1) If any person, partnership, or corporation violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 5(a)), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 5(a)(1)) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b).

(b) The court in an action under subsection (a) shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule

violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

(c) (1) If (A) a cease and desist order issued under section 5(b) has become final under section 5(g) with respect to any person's partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 5(b) with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 5(g)(1), in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) relates: except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 5(b) which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

SEC. 20. There are authorized to be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed \$42,000,000 for the fiscal

year ending June 30, 1975; not to exceed \$47,091,000 for the fiscal year ending June 30, 1976; and not to exceed \$50,000,000 for the fiscal year ending in 1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law.

SEC. 21. This Act may be cited as the "Federal Trade Commission Act."

MOTOR VEHICLE INFORMATION AND COST
SAVINGS ACT

(159)

and the other two, *Chlorophyllum*, *Agaricus* and *Clitocybe*.

and

10

MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Motor Vehicle Information and Cost Savings Act".

15 U.S.C. 1901
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DEFINITIONS

SEC. 2. For the purpose of this Act (except part A of title V):

15 U.S.C. 1901

(1) The term "passenger motor vehicle" means a motor vehicle with motive power, designed for carrying twelve persons or less, except (A) a motorcycle or (B) a truck not designed primarily to carry its operator or passengers.

(2) The term "multipurpose passenger vehicle" means a passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) The term "passenger motor vehicle equipment" means (A) any system, part or component of a passenger motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory, or addition to a passenger motor vehicle, or (B) a towing device.

(4) The term "towing device" means any device manufactured or sold for use in towing a passenger motor vehicle.

(5) The term "property loss reduction standard" means a minimum performance standard established for the purpose of increasing the resistance of passenger motor vehicles or passenger motor vehicle equipment to damage resulting from motor vehicle accidents or for the purpose of reducing the cost of repairing such vehicles or such equipment damaged as a result of such accidents.

(6) The term "bumper standard" means any property loss reduction standard the purpose of which is (A) to eliminate or reduce substantially physical damage to the front or rear ends (or both) of a passenger motor vehicle resulting from (i) a low-speed collision (including but not limited to a low-speed collision with a fixed barrier) or (ii) from the towing of such vehicle, or (B) to reduce substantially the cost of repair of the front or rear ends (or both)

of such a vehicle when damaged (i) in such a collision or (ii) as a result of being towed; but such a standard may not specify a specific dollar amount for the cost of repair of a vehicle when so damaged.

(7) The term "manufacturer" means any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale.

(8) The term "make" when used in describing a passenger motor vehicle means the trade name of the manufacturer of that vehicle.

(9) The term "model" when used in describing a passenger motor vehicle means a category of passenger motor vehicle based upon the size, style, and type of any make of passenger motor vehicle.

(10) The term "motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a passenger motor vehicle or passenger motor vehicle equipment.

(11) The term "Secretary" means the Secretary of Transportation.

(12) The term "insurer of passenger motor vehicles" means any person engaged in the business of issuing (or reinsuring, in whole or part) passenger motor vehicle insurance policies.

(13) The term "damage susceptibility" means susceptibility to physical damage incurred by a passenger motor vehicle involved in a motor vehicle accident.

(14) The term "crashworthiness" means the protection that a passenger motor vehicle affords its passengers against personal injury or death as a result of a motor vehicle accident.

(15) The term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(16) The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(17) The term "interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State.

(18) The term "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

TITLE I—BUMPER STANDARDS

FINDINGS AND PURPOSE

SEC. 101. (a) The Congress finds that it is necessary to reduce the economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents.

15 U.S.C. 1901

(b) It is the purpose of this title to reduce the extent of such economic loss by providing for the promulgation and enforcement of bumper standards.

SETTING OF STANDARDS

SEC. 102. (a) Subject to subsections (b) through (e) of this section, the Secretary by rule—

15 U.S.C. 1912

(1) shall promulgate bumper standards applicable to all passenger motor vehicles manufactured in or imported into the United States, and

(2) may promulgate bumper standards applicable to any item of passenger motor vehicle equipment so manufactured or imported,

except that such a rule shall not apply to any vehicle or item of passenger motor vehicle equipment which is intended solely for export (and is so labeled or tagged on the vehicle or equipment itself and on the outside of the container, if any) and which is exported.

(b) (1) Any standard under subsection (a) shall seek to obtain the maximum feasible reduction of costs to the public and to the consumer, taking into account:

(A) the cost of implementing the standard and the benefits attainable as the result of implementation of the standard;

(B) the effect of implementation of the standard on the cost of insurance and prospective legal fees and costs;

(C) savings in terms of consumer time and inconvenience; and

(D) considerations of health and safety, including emission standards.

(2) Bumper standards under this title shall not conflict with motor vehicle safety standards promulgated under title I of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391, et seq.).

(c) (1) In promulgating any bumper standard under this title the Secretary may for good cause shown—

(A) exempt partially or completely any multi-purpose passenger motor vehicle; or

(B) exempt partially or completely any make, model, or class of passenger motor vehicle manu-

factured for a special use, if such standard would unreasonably interfere with the special use of such vehicle.

(2) To the maximum extent practicable, a bumper standard promulgated by the Secretary shall not preclude the attachment of detachable hitches.

(d) The Secretary shall establish the effective date of any bumper standard when finally promulgating the standard, and such standard shall apply only to passenger motor vehicles or passenger motor vehicle equipment manufactured on or after such effective date. Such effective date shall not be—

(1) earlier than the date on which such standard is finally promulgated, or

(2) later than eighteen months after final promulgation of the standard unless the Secretary presents to Congress and publishes a detailed explanation of the reasons for such later effective date.

In no event shall the Secretary establish an effective date which is earlier than July 1, 1973.

(e) (1) All rules establishing, amending, or revoking a bumper standard under this title shall be issued pursuant to section 553 of title 5 of the United States Code, except that the Secretary shall give interested persons an opportunity for oral presentation of data, views, or arguments, and the opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(2) The Secretary may also conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, for the purpose of resolving any issue of fact material to the establishing, amending, or revoking of a bumper standard.

JUDICIAL REVIEW

15 U.S.C. 1913

SEC. 103. (a) Any person who may be adversely affected by any rule issued under section 102 of this title may at any time prior to sixty days after such rule is issued file a petition with the United States Court of Appeals for the District of Columbia, or any circuit wherein such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or his delegate. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his rule, as provided in section 2112 of title 28, United States Code.

(b) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secre-

tary, and to be adduced in a hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his rule, with the return of such additional evidence.

(c) Upon the filing of the petition referred to in subsection (a) of this section, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter.

(d) The judgment of the court affirming or setting aside, in whole or in part, any such rule of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

POWERS OF THE SECRETARY

SEC. 104. (a) (1) For the purpose of carrying out the provisions of this title, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this title, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this title.

(3) The Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this title. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee

issued under paragraph (1) or paragraph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) All information reported to or otherwise obtained by the Secretary or his representative under this title which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(c) (1) The Secretary is authorized to request from any department, agency, or instrumentality of the Government any information he deems necessary to carry out his functions under this title; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such information to the Department of Transportation upon request made by the Secretary.

(2) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instrumentality to assist in carrying out the duties of the Secretary under this title.

(d) The Secretary shall conduct such research as is necessary for him to carry out his functions under this title.

INSPECTION AND CERTIFICATION

15 U.S.C. 1915

SEC. 105. (a) Every manufacturer of passenger motor vehicles or of passenger motor vehicle equipment shall establish and maintain such records, make such reports, and provide such items and information (including the supplying of vehicles or equipment for testing) as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this title and bumper standards prescribed pursuant to this title and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect vehicles and appropriate books, papers, records, and documents relevant to determining whether such manufacturer has acted or is acting in compliance with this title and bumper standards prescribed pursuant to this title. Such manufacturer shall make available all such items and

information in accordance with such reasonable rules as the Secretary may prescribe. Vehicles and equipment for testing shall be made available under this subsection at a negotiated price that does not exceed the manufacturer's cost.

(b) For purposes of enforcement of this title, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter any factory, warehouse, or establishment in which passenger motor vehicles or passenger motor vehicle equipment is manufactured, or held for introduction into interstate commerce or are held for sale after such introduction; and (2) to inspect such factory, warehouse, or establishment. Each such inspection shall be conducted at reasonable times and in a reasonable manner and shall be commenced and completed with reasonable promptness.

(c) (1) Every manufacturer or distributor of a passenger motor vehicle subject to a Federal bumper standard under this title, or an item of passenger motor vehicle equipment subject to such a standard, shall furnish to the distributor or dealer at the time of delivery of such vehicle or item of equipment by such manufacturer or distributor a certification that each such vehicle or item of equipment conforms to applicable Federal bumper standards. The Secretary is authorized to issue rules prescribing the manner and form of such certification.

(2) Paragraph (1) of this subsection shall not apply to any passenger motor vehicle or item of passenger motor vehicle equipment which is intended solely for export (and is so labeled or tagged on the vehicle or equipment itself and on the outside of the container, if any) and which is exported.

PROHIBITED ACTS

SEC. 106. (a) No person shall—

15 U.S.C. 1916

(1) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date any applicable Federal bumper standard takes effect under this title unless it is in conformity with such standard;

(2) fail to comply with any rule prescribed by the Secretary under this title;

(3) fail to keep specified records or refuse access to or copying of records, or fail to make reports or provide items or information, or fail or refuse to permit entry or inspection, as required under this title or any rule issued thereunder; or

(4) (A) fail to furnish a certificate required by section 105(c), or (B) issue a certificate required by such subsection to the effect that a passenger motor vehicle or passenger motor vehicle equipment conforms to all applicable bumper standards, if such person knows, or in the exercise of due care has reason to know, that such certificate is false or misleading in a material respect.

(b) (1) Paragraph (1) of subsection (a) shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any passenger motor vehicle or any passenger motor vehicle equipment after the first purchase of it in good faith for purposes other than resale. Nothing contained in this paragraph shall be construed as prohibiting the Secretary from promulgating any standard which requires vehicles or equipment to be manufactured so as to perform in accordance with the standard over a specified period of operation or use.

(2) Paragraph (1) of subsection (a) shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that the vehicle or item of equipment is not in conformity with applicable bumper standards or to any person who, prior to such first purchase, holds a certificate issued under section 105(c) to the effect that the vehicle or item of equipment conforms to all applicable Federal bumper standards, unless such person knows that such vehicle or such equipment does not so conform.

(3) A passenger motor vehicle or passenger motor vehicle equipment offered for importation in violation of paragraph (1) of subsection (a) shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary; except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such vehicle or equipment into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such vehicle or such equipment will be brought into conformity with any applicable Federal bumper standard prescribed under this title, or will be exported or abandoned to the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the importation of any passenger motor vehicle or passenger motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

(c) Compliance with any Federal bumper standard issued under this title does not exempt any person from any liability under statutory or common law.

ENFORCEMENT

15 U.S.C. 1917

SEC. 107. (a) Whoever violates subsection (a) of section 106 may be assessed a civil penalty of not to exceed \$1,000 for each violation. Such penalty shall be assessed by the Secretary and collected in a civil action brought by the Attorney General or by the Secretary (with the concurrence of the Attorney General) by any of the Secretary's attorneys designated by the Secretary for such purpose. With respect to violations of paragraph (1) or (4) of subsection (a) of section 106, a separate violation is committed with respect to each passenger motor vehicle or each item of passenger motor vehicle equipment which fails to conform to an applicable bumper standard or for which a certificate is not furnished or for which a misleading or false certificate is issued; except that the maximum civil penalty shall not exceed \$800,000 for any related series of violations.

(b) (1) Any person who knowingly and willfully violates section 106(a)(1) after having received notice of noncompliance from the Secretary shall be fined not more than \$50,000 or be imprisoned not more than one year, or both.

(2) If a corporation violates section 106(a)(1) after having received notice of noncompliance from the Secretary, any individual director, officer, or agent of such corporation who knowingly and willfully authorized, ordered, or performed any of the acts or practices constituting in whole or in part such violation and who had knowledge of such notice from the Secretary shall be subject to penalties under this section in addition to the corporation.

(c) (1) Upon petition by the Secretary or by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title, or to restrain the sale, offer for sale, or the introduction or delivery for introduction in interstate commerce, or the importation into the United States, of any passenger motor vehicle or passenger motor vehicle equipment which is determined, prior to the first purchase of such vehicle or such equipment in good faith for purposes other than resale, not to conform to applicable bumper standards prescribed pursuant to this title. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and

afford such opportunity shall not preclude the granting of appropriate relief.

(2) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this subsection, which violation also constitutes a violation of this title, trial shall be by the court, or upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(3) Actions under paragraph (1) of this subsection and under subsection (a) of this section may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(4) In any actions brought under paragraph (1) of this subsection and under subsection (a) of this section, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

CIVIL ACTION

15 U.S.C. 1918

SEC. 108. (a) Any owner of a passenger motor vehicle who sustains damages as a result of a motor vehicle accident because such vehicle did not comply with any applicable Federal bumper standard under this title may bring a civil action against the manufacturer of that vehicle in the United States District Court for the District of Columbia, or in the United States district court for the judicial district in which that owner resides, to recover the amount of those damages, and in the case of any such successful action to recover that amount, costs and reasonable attorneys' fees shall be awarded to that owner.

(b) Any such action shall be brought within three years of the date of the motor vehicle accident.

PUBLIC ACCESS TO INFORMATION

15 U.S.C. 1919

SEC. 109. Subject to section 104(b), copies of any communications, documents, reports, or other information sent or received by the Secretary in connection with his duties under this title shall be made available to any member of the public, upon request, at cost.

EFFECT ON STATE LAWS

15 U.S.C. 1920

SEC. 110. (a) Except as provided in subsection (b) of this section, no State or political subdivision thereof shall

have any authority to establish or enforce with respect to any passenger motor vehicle or passenger motor vehicle equipment offered for sale any bumper standard which is not identical to a Federal bumper standard.

(b) (1) Until a Federal bumper standard takes effect with respect to an aspect of performance of a passenger motor vehicle or of an item of passenger motor vehicle equipment, neither this Act nor the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391, et seq.) shall affect the authority of a State to continue to enforce any bumper standard which is applicable to the same aspect of performance of such vehicle or item of equipment, which is not in conflict with any Federal standard promulgated under title 1 of the National Traffic and Motor Vehicle Safety Act of 1966, and which was in effect or had been promulgated on the date of enactment of this Act.

(2) The Federal Government or the government of any State or political subdivision thereof may establish a bumper standard applicable to vehicles or equipment procured for its own use which is not identical to the Federal standard under section 102 if such requirement imposes an additional or higher standard of performance.

AUTHORIZATION OF APPROPRIATIONS

SEC. 111. There are authorized to be appropriated to carry out this title \$125,000 for the fiscal year ending June 30, 1976; \$75,000 for the period beginning July 1, 1976, and ending September 30, 1976; \$130,000 for the fiscal year ending September 30, 1977; and \$395,000 for the fiscal year ending September 30, 1978.

15 U.S.C. 1921

REPORTS

SEC. 112. The Secretary shall report to the Congress and to the President not later than March 31 of each year on the progress in carrying out the purposes of this title. Each such report shall contain a statement of the cost savings that have resulted from the administration of this title, and include such recommendations for further legislative or other action as the Secretary determines may be appropriate.

15 U.S.C. 1922

TITLE II—AUTOMOBILE CONSUMER INFORMATION STUDY

CONSUMER INFORMATION

SEC. 201. (a) During the first year after enactment of this Act the Secretary shall conduct a comprehensive study and investigation of the methods for determining the following characteristics of passenger motor vehicles:

- (1) The damage susceptibility of such vehicles.
- (2) The degree of crashworthiness of such vehicles.
- (3) The characteristics of such vehicles with respect to the ease of diagnosis and repair of mechanical and electrical systems which fail during use or which are damaged in motor vehicle accidents.

(b) After reviewing the methods for determining the characteristics enumerated in subsection (a), the Secretary shall make specific recommendations for the further development of existing methods or for the development of new methods.

(c) After the study has been completed the Secretary is authorized and directed to devise specific ways in which existing information and information to be developed relating to (1) the characteristics of passenger motor vehicles enumerated in subsection (a), or (2) vehicle operating costs dependent upon those characteristics (including information obtained pursuant to section 205 of this title), can be communicated to consumers so as to be of benefit in their passenger motor vehicle purchasing decisions.

(d) The Secretary shall compile the information described in subsection (c) and furnish it to the public in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger motor vehicles with respect to the characteristics enumerated in subsection (a). The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

(e) The Secretary, not later than February 1, 1975, shall by rule establish procedures requiring automobile dealers to distribute to prospective purchasers information developed by the Secretary and provided to the dealer which compares differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness.

ADMINISTRATIVE POWERS

SEC. 202. In order to carry out his functions under this title the Secretary is authorized to—

15 U.S.C. 1942

(1) appoint and fix the compensation of such employees as he deems necessary without regard to the provisions of title 5, United States Code, governing appointment in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, but at rates for individuals not to exceed \$100 per diem;

(3) contract with any person for the conduct of research and surveys and the preparation of reports; and

(4) appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive services, such advisory committees, representative of the divergent interests involved, as he deems appropriate for the purposes of consultation with and advice to the Secretary.

Members of advisory committees appointed under paragraph (4) of this section, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be compensated at rates to be fixed by the Secretary but not exceeding \$100 per day, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Members of such advisory committees shall, for the purposes of chapter 11, title 18, United States Code, be deemed to be special Government employees.

COOPERATION OF FEDERAL AGENCIES

SEC. 203. (a) The Secretary may request from any department, agency, or independent instrumentality of the Government any information he deems necessary to carry out his functions under this title; and each such department, agency, or independent instrumentality is authorized and directed to cooperate with the Secretary and furnish such information to the Department of Transportation upon request made by the Secretary.

15 U.S.C. 1943

(b) The head of any Federal department, agency, or independent instrumentality may detail, on a reimbursable basis, any personnel of such department, agency, or independent instrumentality to assist in carrying out the duties of the Secretary under this title.

HEARINGS AND PRODUCTION OF DOCUMENTARY EVIDENCE

15 U.S.C. 1944

SEC. 204. (a) For the purpose of carrying out the provisions of this title, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(b) In order to carry out the provisions of this title, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to the study authorized by this title.

(c) The Secretary may require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this title. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(d) Any United States district court within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under subsection (a) or subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(f) Any information which is reported to or otherwise obtained by the Secretary or such officer or employee under this section and which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code shall not be disclosed except to other officers or employees of the Federal Government for their use in carrying out this title. Nothing in the preceding sentence shall authorize the withholding of information by the Secretary (or any officer or employee under his control) from the duly authorized committees of the Congress.

INSURANCE INFORMATION

15 U.S.C. 1945

SEC. 205. (a) Insurers of passenger motor vehicles, or their designated agents, shall, upon request by the Sec-

retary, make such reports and furnish such information as the Secretary may reasonably require to enable him to carry out the purposes of this title.

(b) Such reports and information may include, but shall not be limited to—

(1) accident claim data relating to the type and extent of physical damage and the cost of remedying the damage according to make, model, and model year of passenger motor vehicle, and

(2) accident claim data relating to the type and extent of personal injury according to make, model, and model year of passenger motor vehicle.

(c) In determining the reports and information to be furnished pursuant to subsections (a) and (b) of this section, the Secretary shall—

(1) consider the cost of preparing and furnishing such reports and information;

(2) consider the extent to which such reports and information will contribute to carrying out the purposes of this title; and

(3) consult with such State and insurance regulatory agencies and other agencies and associations, both public and private, as he deems appropriate.

(d) The Secretary shall, to the extent possible, obtain such reports and information from the insurers of passenger motor vehicles on a voluntary basis.

(e) Every insurer of passenger motor vehicles shall, upon request by the Secretary, furnish him a description of the extent to which the insurance rates or premiums charged by the insurer for passenger motor vehicles are affected by the damage susceptibility, crashworthiness, and cost of damage repair and personal injury involved relating to each of the various makes and models of passenger motor vehicles. Such insurer shall also furnish the Secretary upon request such information as may be available to such insurer reflecting the effect of the damage susceptibility, crashworthiness, and cost of damage repair and personal injury involved relating to each of the various makes and models of passenger motor vehicles upon risk incurred by insuring each such make and model.

(f) The Secretary shall not, in disseminating any information received pursuant to this section, disclose the name of, or other identifying information about, any person who may be an insured, a claimant, a passenger, an owner, a driver, an injured person, a witness, or otherwise involved in any motor vehicle crash or collision unless the Secretary has the consent of the persons so named or otherwise identified.

(g) The information required by this section shall be furnished at such times and in such manner as the Secretary shall prescribe by regulation or otherwise.

PROHIBITED ACT

15 U.S.C. 1946 SEC. 206. No person shall fail or refuse (1) to furnish the Secretary with the data or information requested by him under this title, or (2) (to comply with rules prescribed by the Secretary under this title.

INJUNCTIVE RELIEF

15 U.S.C. 1947 SEC. 207. Upon petition by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of section 206. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views and shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief. Paragraphs (3) and (4) of section 107(b) shall apply to any action under this section in the same manner as they apply to actions under section 107.

CIVIL PENALTY

15 U.S.C. 1948 SEC. 208. (a) Whoever violates section 206 shall be subject to a civil penalty of not to exceed \$1,000 for each violation. A violation of section 206 shall constitute a separate violation with respect to each failure or refusal to comply with a requirement thereunder; except that the maximum civil penalty under this subsection shall not exceed \$400,000 for any related series of violations.

(b) Any civil penalty under this section may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(c) Paragraphs (3) and (4) of section 107(b) shall apply to any action under this section in the same manner as they apply to actions under section 107.

AUTHORIZATION OF APPROPRIATIONS

15 U.S.C. 1949 SEC. 209. There are authorized to be appropriated to carry out this title \$1,875,000 for the fiscal year ending June 30, 1976; \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976; \$3,385,000 for the fiscal year ending September 30, 1977; and \$3,375,000 for the fiscal year ending September 30, 1978.

TITLE III—DIAGNOSTIC INSPECTION DEMONSTRATION PROJECTS

PART A—STATE PROGRAMS

POWERS AND DUTIES

SEC. 301. (a) The Secretary shall establish motor vehicle diagnostic inspection demonstration projects, inspections under which shall commence not later than January 1, 1974.

15 U.S.C. 1961

(b) To carry out the program under this part, the Secretary shall—

(1) make grants in accordance with subsection (c) and furnish technical assistance to States; and

(2) consult with the Administrator of the Environmental Protection Agency.

(c)(1) Any demonstration project under this part shall be conducted by, or under supervision of, a State in accordance with the application of the State submitted under section 303, and may provide for the performance of diagnostic inspection services either by public agencies or by private organizations, but no person may perform diagnostic inspection services for profit under any such program.

(2) Not less than five nor more than ten demonstration projects may be assisted by the Secretary under this part. No more than 50 per centum of the projects so assisted may permit diagnostic inspection services to be performed under the project by any person who also provides automobile repair services or who is affiliated with, controls, is controlled by, or is under common control with, any person who provides automobile repair services.

ELIGIBILITY AND CRITERIA

SEC. 302. (a) A State may be eligible for grants or other assistance under this part if the Secretary determines on the basis of an application by such State that such State will undertake a motor vehicle diagnostic inspection demonstration project which meets the requirements of subsection (b) of this section.

15 U.S.C. 1962

(b)(1) A motor vehicle diagnostic inspection demonstration project shall be designed, established, and operated to conduct periodic safety inspections of motor vehicles pursuant to criteria established by the Secretary by regulation and emission inspections pursuant to criteria established by the Secretary by regulation in consultation with the Administrator of the Environmental Protection Agency.

(2) Such project shall require an additional inspection of any motor vehicle subject to the demonstration project (as determined by the Secretary)—

(A) whenever the title to such motor vehicle is transferred to another person unless the transfer is for the purpose of resale; and

(B) whenever such motor vehicle sustains substantial damage to any safety-related or emission-related system or subsystem, as prescribed by the Secretary.

(3) To the greatest extent practicable, such inspections shall be conducted so as to provide specific technical diagnoses of each motor vehicle inspected in order to facilitate correction of any component failing inspection.

(4) A demonstration project shall provide for reinspection of vehicles which initially fail to meet the safety and emission standards established for the project after repair.

(5) Each project shall provide to the Secretary information and data relating to the development of diagnostic testing equipment designed to maximize the interchangeability and interface capability of test equipment and vehicles, and information, and data relating to the costs and benefits of such projects, including information and data relating to vehicle-in-use standards, vehicle designs which facilitate or hinder inspection and repair, the standardization of diagnostic systems and test equipment, the capability of the motor vehicle repair industry to correct diagnosed deficiencies or malfunctions and the costs of such repairs, the relative costs and benefits of the project, the efficiency of facility designs employed, recommendations as to feasible reject levels which may be employed, in any such project and such other information and data as the Secretary may require.

APPLICATIONS AND ASSISTANCE

15 U.S.C. 1963

SEC. 303. (a) A grant or other assistance under this part may be obtained upon an application by a State at such time, in such manner, and containing such information as the Secretary prescribes, including information respecting categories of expenditures by the State from financial assistance under this part.

(b) Upon the approval of any such application, the Secretary may make a grant to the State to pay each fiscal year an amount not in excess of 90 per centum of those categories of expenditures for establishing and operating its project which the Secretary approves. Federal financial assistance under this part shall not be available with respect to costs of inspections carried out after September 30, 1977, under such a project. Any equipment purchased with Federal funds may be retained by a State for its inspection activities following the demonstration project with the approval of the Secretary. Payments under this subsection may be made in advance, in installments, or by way of reimbursement.

(c) The Secretary shall approve such applications and take such other action as may be necessary to provide that at least three motor vehicle diagnostic inspection demonstration projects receive financial assistance under grants under this part through September 30, 1977.

PART B—SPECIAL DEMONSTRATION PROJECTS

FUEL EFFICIENCY

SEC. 311. (a) The Secretary shall establish a special motor vehicle diagnostic inspection demonstration project to assist in the research, rapid development, and evaluation of advanced inspection, analysis, and diagnostic equipment suitable for use by any State in any high volume inspection facility designed to assess the safety, noise, emissions, and fuel efficiency of motor vehicles. Motor vehicles shall be inspected at such project for purposes of (1) evaluating the conditions of parts, components, and repairs which may be necessary to comply with State and Federal safety, noise, and emissions standards, and (2) assisting the motor vehicle owner in achieving optimum fuel and maintenance economy.

15 U.S.C. 1963a

(b) The Secretary shall evaluate, to the extent feasible the existing diagnostic analysis and test equipment available for use in small automotive repair establishments and report to the Congress, within two years after the enactment of the Motor Vehicle Information and Cost Savings Act Amendments of 1976, as to the scope of research and development required to make such equipment compatible with State motor vehicle inspection and diagnostic equipment. The report shall assess the extent to which private industry can supply small automotive repair shops with low-cost test equipment which can be used to monitor compliance with Federal safety, noise, and emissions standards promulgated by the Secretary, the Administrator of the Environmental Protection Agency, and by State or local regulatory agencies.

(c) In carrying out this section, the Secretary shall provide—

(1) the Administrator of the Environmental Protection Agency with an opportunity to assist, to the extent such assistance relates to noise and emissions, in the establishment of the special motor vehicle diagnostic inspection demonstration project under subsection (a) and the evaluation of existing diagnostic and test equipment under subsection (b); and

(2) the Administrator of the Federal Energy Administration with an opportunity to assist, to the extent such assistance relates to fuel efficiency, in the establishment of such project and the evaluation of such equipment.

PART C—AUTHORIZATION OF APPROPRIATIONS

AUTHORIZATION OF APPROPRIATIONS

15 U.S.C. 1964

SEC. 321. There are authorized to be appropriated to carry out this title \$5,000,000 for the fiscal year ending June 30, 1976; \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976; \$7,500,000 for the fiscal year ending September 30, 1977; and \$4,400,000 for the fiscal year ending September 30, 1978. Sums appropriated under this section shall remain available until expended.

TITLE IV—ODOMETER REQUIREMENTS

FINDINGS AND PURPOSE

15 U.S.C. 1981

SEC. 401. The Congress hereby finds that purchasers, when buying motor vehicles, rely heavily on the odometer reading as an index of the condition and value of such vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by the vehicle; that an accurate indication of the mileage traveled by a motor vehicle assists the purchaser in determining its safety and reliability; and that motor vehicles move in the current of interstate and foreign commerce or affect such commerce. It is therefore the purpose of this title to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers.

DEFINITIONS

15 U.S.C. 1982

SEC. 402. As used in this title—

- (1) The term “dealer” means any person who has sold 5 or more motor vehicles in the past 12 months to purchasers who in good faith purchase such vehicles for purposes other than resale.
- (2) The term “distributor” means any person who has sold 5 or more vehicles in the past 12 months for resale.
- (3) The term “odometer” means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

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- (4) The term “repair and replacement” means to restore to a sound working condition by replacing the odometer or any part thereof or by correcting what is inoperative.

(5) The term "transfer" means to change ownership by purchase, gift, or any other means.

UNLAWFUL DEVICES

SEC. 403. No person shall advertise for sale, sell, use or install or cause to be installed, any device which causes an odometer to register any mileage other than the true mileage driven. For purposes of this section, the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

15 U.S.C. 1983

UNLAWFUL CHANGE OF MILEAGE

SEC. 404. No person shall disconnect, reset, or alter or cause to be disconnected, reset, or altered, the odometer of any motor vehicle with intent to change the number of miles indicated thereon.

15 U.S.C. 1984

OPERATION WITH INTENT TO DEFRAUD

SEC. 405. No person shall, with intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

15 U.S.C. 1985

CONSPIRACY

SEC. 406. No person shall conspire with any other person to violate section 403, 404, 405, 407, or 408.

15 U.S.C. 1986

LAWFUL SERVICE, REPAIR, OR REPLACEMENT

SEC. 407. (a) Nothing in this title shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced.

15 U.S.C. 1987

(b) (1) No person shall fail to adjust an odometer or affix a notice regarding such adjustment as required pursuant to subsection (a) of this section.

(2) No person shall, with intent to defraud, remove or alter any notice affixed to a motor vehicle pursuant to subsection (a) of this section.

DISCLOSURE REQUIREMENTS

SEC. 408. (a) Not later than 90 days after the date of enactment of this Act, the Secretary shall prescribe rules

15 U.S.C. 1988

requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

(1) Disclosure of the cumulative mileage registered on the odometer.

(2) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

Such rules shall prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained.

(b) No transferor shall violate any rule prescribed under this section or give a false statement to a transferee in making any disclosure required by such rule.

(c) No transferee who, for purposes of resale, acquires ownership of a motor vehicle shall accept any written disclosure required by any rule prescribed under this section if such disclosure is incomplete.

PRIVATE CIVIL ACTION

15 U.S.C. 1989

SEC. 409. (a) Any person who, with intent to defraud, violates any requirement imposed under this title shall be liable in an amount equal to the sum of—

(1) three times the amount of actual damages sustained or \$1,500, whichever is the greater; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

(b) An action to enforce any liability created under subsection (a) of this section, may be brought in a United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises.

INJUNCTIVE ENFORCEMENT

15 U.S.C. 1990

SEC. 410. (a) The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title, or rules, regulations, or orders issued thereunder. Such actions may be brought by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found, is an inhabitant, or transacts business. In any action brought under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) In any action brought under this title, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

STATE ENFORCEMENT

SEC. 411. (a) If any person violates any requirement imposed under this title, the chief law enforcement officer of the State in which such violation occurred may bring any action to—

15 U.S.C. 1990a

- (1) restrain such violation; or
- (2) recover amounts for which such person is liable under section 409 to each person on whose behalf such action is brought.

(b) Any action under subsection (a) of this section may be brought within two years from the date on which the liability arises—

- (1) without regard to the amount in controversy, in any appropriate district court of the United States, or
- (2) in any court of competent jurisdiction of any State.

CIVIL PENALTY

SEC. 412. (a) Any person who commits any act or causes to be done any act that violates any provision of this title or omits to do any act or causes to be omitted any act that is required by any such provision shall be subject to a civil penalty not to exceed \$1,000 for each such violation. A violation of any such provision shall, for purposes of this section, constitute a separate violation with respect to each motor vehicle or device involved, except that the maximum civil penalty shall not exceed \$100,000 for any related series of violations.

15 U.S.C. 1990b

(b) Any civil penalty under this section shall be assessed by the Secretary and collected in a civil action brought by the Attorney General on behalf of the United States. Before referral of civil penalty claims to the Attorney General, civil penalties may be compromised by the Secretary after affording the person charged with a violation of any section of this title an opportunity to present views and evidence in support thereof to establish that the alleged violation did not occur. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

CRIMINAL PENALTIES

SEC. 413. (a) Any person who knowingly and willfully commits any act or causes to be done any act that violates

15 U.S.C. 1990c

any provision of this title or knowingly and willfully omits to do any act or causes to be omitted any act that is required by any such provision shall be fined not more than \$50,000 or imprisoned not more than one year, or both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of any section of this title shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a).

INSPECTIONS AND INVESTIGATIONS

15 U.S.C. 1990d

SEC. 414. (a) (1) The Secretary is authorized to conduct any inspection or investigation necessary to enforce this title or any rules, regulations, or orders issued thereunder. Information obtained indicating noncompliance with this title or any rules, regulations, or orders issued thereunder, may be referred to the Attorney General for investigative consideration. In making investigations under this paragraph, the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

(2) For purposes of carrying out paragraph (1) of this subsection, officers or employees duly designated by the Secretary, upon stating their purpose and presenting appropriate credentials and written notice (which notice may consist of an administrative inspection warrant) to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

(A) to enter (i) any factory, warehouse, establishment, or other commercial premises in or on which motor vehicles or items of motor vehicle equipment are manufactured, held for shipment or sale, maintained, or repaired, or (ii) any noncommercial premises in or on which the Secretary reasonably believes that there is a motor vehicle or item of motor vehicle equipment that has been the object of a violation of this title;

(B) to impound, for a period not to exceed 72 hours, for purposes of inspection, any motor vehicle or item of motor vehicle equipment that the Secretary reasonably believes to have been the object of a violation of this title; and

(C) to inspect any factory, warehouse, establishment, premises, vehicle, or equipment referred to in subparagraph (A) or (B) of this paragraph.

Each inspection or impoundment under this paragraph shall be commenced and completed with reasonable promptness.

(3) Whenever, under the authority of paragraph (2) (B) of this subsection, the Secretary impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to part II of the Interstate Commerce Act) or any item of motor vehicle equipment, he shall pay reasonable compensation to the owner of such vehicle or equipment to the extent that such inspection or impounding results in the denial of the use of the vehicle or equipment to its owner or in the reduction in value of the vehicle or equipment.

(b) For the purpose of enabling the Secretary to determine whether any dealer or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder, each dealer and distributor shall—

(1) maintain such records as the Secretary may reasonably require to make such determination;

(2) permit an officer or employee duly designated by the Secretary, upon request of such officer or employee, to inspect appropriate books, papers, records, and documents relevant to making such determination; and

(3) provide such officer or employee information from records required to be maintained under this subsection as the Secretary finds necessary for such determination if the Secretary (A) provides the reason or purpose for requiring such information, and

(B) identifies to the fullest extent practicable such information. Nothing in this subsection authorizes the Secretary to require a dealer or distributor to provide information on a regular periodic basis.

(c) (1) For the purpose of carrying out the provisions of this title, the Secretary or, with the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this title, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this title.

(3) Except to the extent inconsistent with the last sentence of subsection (b) of this section, the Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under

this title. Such reports and answers shall be under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena or order of the Secretary or such officer or employee issued under paragraph (1) or (3) of this subsection, issue an order requiring compliance therewith, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage which are paid witnesses in the courts of the United States.

(d) All information reported to or otherwise obtained by the Secretary or his representative under this title, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

ADMINISTRATIVE WARRANTS

15 U.S.C. 1990e

SEC. 415. (a) A warrant under this section shall be required for any entry or administrative inspection (including impoundment of motor vehicles or motor vehicle equipment) authorized by section 414 of this Act, except if such entry or inspection is—

(1) with the consent of the owner, operator, or agent in charge of the factory, warehouse, establishment, or premises;

(2) in situations involving inspection of motor vehicles where there is reasonable cause to believe that the mobility of the motor vehicle makes it impracticable to obtain a warrant;

(3) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking;

(4) for access to and examination of books, records, and any other documentary evidence pursuant to section 414(c) (2); or

(5) in any other situations where a warrant is not constitutionally required.

(b) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate,

may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by section 414 and of impoundment of motor vehicles or motor vehicle equipment appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this title or regulations issued thereunder sufficient to justify administrative inspections of the area, factory, warehouse, establishment, premises, or motor vehicle, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall be issued only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is a reasonable basis for believing they exist, he shall issue a warrant identifying the area, factory, warehouse, establishment, premises, or motor vehicle to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall—

(A) identify the items or type of property to be impounded, if any;

(B) be directed to a person authorized under section 414 to execute it;

(C) state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof;

(D) command the person to whom it is directed to inspect the area, factory, warehouse, establishment, premises, or motor vehicle identified for the purpose specified, and, where appropriate, shall direct the impoundment of the property specified;

(E) direct that it be served during the hours specified in it; and

(F) designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing by the Secretary of a need therefor, the judge or magistrate allows additional time in the warrant. If property is impounded pursuant to a warrant, the person executing the warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which

the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

PROHIBITED ACTS

15 U.S.C. 1990f

SEC. 416. No person shall fail to comply with the requirements of section 414 to maintain records, make reports, provide information, permit access to or copying of records, permit entry or inspection, or permit impounding.

AUTHORIZATION OF APPROPRIATIONS

15 U.S.C. 1990g

SEC. 417. There are authorized to be appropriated to carry out this title \$450,000 for the fiscal year ending June 30, 1976; \$100,000 for the period beginning July 1, 1976, and ending September 30, 1976; \$650,000 for the fiscal year ending September 30, 1977; and \$562,000 for the fiscal year ending September 30, 1978.

EFFECT ON STATE LAW

15 U.S.C. 1991

SEC. 418. This title does not—

(1) annul, alter, or affect the laws of any State with respect to the disconnecting, altering, or tampering with odometers with the intent to defraud, or

(2) exempt any person subject to the provisions of this title from complying with such laws,

except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.

EFFECTIVE DATE

15 U.S.C. 1981
nts

SEC. 419. This title (other than section 408(a)) shall take effect ninety calendar days following the date of

enactment of this Act. Section 408(a) shall take effect on the date of enactment of this Act.

REPORT

SEC. 420. One year after the date of enactment of this Act, the Secretary shall report to the Congress and to the President on the extent to which the reliability of odometers can be improved, on the technical feasibility of producing odometers which are tamper proof, and on the Secretary's plans and recommendations for future action.

15 U.S.C. 1981
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LEGISLATIVE HISTORY

HOUSE REPORTS: No. 92-1033 accompanying H.R. 11627 (Committee on Interstate and Foreign Commerce) and No. 92-1476 (committee of conference).

SENATE REPORT: No. 92-413 (Committee on Commerce).

CONGRESSIONAL RECORD:

Vol. 117 (1971) : Nov. 3, considered and passed Senate.

Vol. 118 (1972) :

May 22, considered and passed House, amended, in lieu of H.R. 11627.

Oct. 4, House agreed to conference report.

Oct. 6, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS: Vol. 8, No. 44 (1972) : Oct. 21, Presidential statement.

TITLE V—IMPROVING AUTOMOTIVE EFFICIENCY

PART A—AUTOMOTIVE FUEL ECONOMY

DEFINITIONS

15 U.S.C. 2001

SEC. 501. For purposes of this part:

(1) The term "automobile" means any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

- (A) which is rated at 6,000 lbs. gross vehicle weight or less, or
- (B) which—
 - (i) is rated at more than 6,000 lbs. gross vehicle weight but less than 10,000 lbs. gross vehicle weight,
 - (ii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards under this part are feasible, and
 - (iii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards will result in significant energy conservation, or is a type of vehicle which the Secretary determines is substantially used for the same purposes as vehicles described in subparagraph (A) of this paragraph.

The Secretary may prescribe such rules as may be necessary to implement this paragraph.

(2) The term "passenger automobile" means any automobile (other than an automobile capable of off-highway operation) which the Secretary determines by rule is manufactured primarily for use in the transportation of not more than 10 individuals.

(3) The term "automobile capable of off-highway operation" means any automobile which the Secretary determines by rule—

- (A) has a significant feature (other than 4-wheel drive) which is designed to equip such automobile for off-highway operation, and
- (B) either—
 - (i) is a 4-wheel drive automobile, or

(ii) is rated at more than 6,000 pounds gross vehicle weight.

(4) The term "average fuel economy" means average fuel economy, as determined under section 503.

(5) The term "fuel" means gasoline and diesel oil. The Secretary may, by rule, include any other liquid fuel or any gaseous fuel within the meaning of the term "fuel" if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(6) The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under section 503(d).

(7) The term "average fuel economy standard" means a performance standard which specifies a minimum level of average fuel economy which is applicable to a manufacturer in a model year.

(8) The term "manufacturer" means any person engaged in the business of manufacturing automobiles. The Secretary shall prescribe rules for determining, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer of such automobile for purposes of this part.

(9) The term "manufacturer" (except for purposes of section 502(c)) means to produce or assemble in the customs territory of the United States, or to import.

(10) The term "import" means to import into the customs territory of the United States.

(11) The term "model type" means a particular class of automobile as determined, by rule, by the EPA Administrator, after consultation and coordination with the Secretary.

(12) The term "model year", with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "Secretary" means the Secretary of Transportation.

(14) The term "EPA Administrator" means the Administrator of the Environmental Protection Agency.

**AVERAGE FUEL ECONOMY STANDARDS APPLICABLE TO
EACH MANUFACTURER**

15 U.S.C. 2002

SEC. 502. (a)(1) Except as otherwise provided in paragraph (4) or in subsection (c) or (d), the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1977 shall not be less than the number of miles per gallon established for such model year under the following table:

Model year:	<i>Average fuel economy standard (in miles per gallon)</i>
1978 -----	18.0.
1979 -----	19.0.
1980 -----	20.0.
1981 -----	Determined by Secretary under paragraph (3) of this subsection.
1982 -----	Determined by Secretary under paragraph (3) of this subsection.
1983 -----	Determined by Secretary under paragraph (3) of this subsection.
1984 -----	Determined by Secretary under paragraph (3) of this subsection.
1985 and thereafter-----	27.5.

(2) Not later than January 15 of each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part. The review required to be transmitted not later than January 15, 1979, shall include a comprehensive analysis of the program required by this part. Such analysis shall include an assessment of the ability of manufacturers to meet the average fuel economy standard for model year 1985 as specified in paragraph (1) of this subsection, and any legislative recommendations the Secretary or the EPA Administrator may have for improving the program required by this part.

(3) Not later than July 1, 1977, the Secretary shall prescribe, by rule, average fuel economy standards for passenger automobiles manufactured in each of the model years 1981 through 1984. Any such standard shall apply to each manufacturer (except as provided in subsection (c)), and shall be set for each such model year at a level which the Secretary determines (A) is the maximum feasible average fuel economy level, and (B) will result in steady progress toward meeting the average fuel economy standard established by or pursuant to this subsection for model year 1985.

(4) The Secretary may, by rule, amend the average fuel economy standard specified in paragraph (1) for model year 1985, or for any subsequent model year, to a level which he determines is the maximum feasible average fuel economy level for such model year, except that any amendment which has the effect of increasing an average fuel economy standard to a level in excess of 27.5

miles per gallon, or of decreasing any such standard to a level below 26.0 miles per gallon, shall be submitted to the Congress in accordance with section 551 of the Energy Policy and Conservation Act, and shall not take effect if either House of the Congress disapproves such amendment in accordance with the procedures specified in such section.

(5) For purposes of considering any modification which is submitted to the Congress under paragraph (4), the 5 calendar days specified in section 551(f)(4)(A) of the Energy Policy and Conservation Act shall be lengthened to 20 calendar days, and the 15 calendar days specified in section 551 (c) and (d) of such Act shall be lengthened to 60 calendar days.

(b) The Secretary shall, by rule, prescribe average fuel economy standards for automobiles which are not passenger automobiles and which are manufactured by any manufacturer in each model year which begins more than 30 months after the date of enactment of this title. Such rules may provide for separate standards for different classes of such automobiles (as determined by the Secretary), and shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.

(c) On application of a manufacturer who manufactured (whether or not in the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made, the Secretary may, by rule, exempt such manufacturer from subsection (a). An application for such an exemption shall be submitted to the Secretary, and shall contain such information as the Secretary may require by rule. Such exemption may only be granted if the Secretary determines that the average fuel economy standard otherwise applicable under subsection (a) is more stringent than the maximum feasible average fuel economy level which such manufacturer can attain. The Secretary may not issue exemptions with respect to a model year unless he establishes, by rule, alternative average fuel economy standards for passenger automobiles manufactured by manufacturers which receive exemptions under this subsection. Such standards may be established for an individual manufacturer, for all automobiles to which this subsection applies, or for such classes of such automobiles as the Secretary may define by rule. Each such standard shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for the manufacturers to which the standard applies. An exemption under this subsection shall apply to a

model year only if the manufacturer manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in such model year.

(d) (1) Any manufacturer may apply to the Secretary for modification of an average fuel economy standard applicable under subsection (a) to such manufacturer for model year 1978, 1979, or 1980. Such application shall contain such information as the Secretary may require by rule, and shall be submitted to the Secretary within 24 months before the beginning of the model year for which such modification is requested.

(2) (A) If a manufacturer demonstrates and the Secretary finds that—

(i) a Federal standards fuel economy reduction is likely to exist for such manufacturer for the model year to which the application relates, and

(ii) such manufacturer applied a reasonably selected technology.

the Secretary shall, by rule, reduce the average fuel economy standard applicable under subsection (a) to such manufacturer by the amount of such manufacturer's Federal standards fuel economy reduction, rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the Secretary). To the maximum extent practicable, prior to making a finding under this paragraph with respect to an application, the Secretary shall request, and the EPA Administrator shall supply, test results collected pursuant to section 503(d) of this Act for all automobiles covered by such application.

(B) (i) If the Secretary does not find that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), he shall deny the application of such manufacturer.

(ii) If the Secretary—

(I) finds that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), and

(II) does not find that such manufacturer applied a reasonably selected technology,

the average fuel economy standard applicable under subsection (a) to such manufacturer shall, by rule, be reduced by an amount equal to the Federal standards fuel economy reduction which the Secretary finds would have resulted from the application of a reasonably selected technology.

(3) For purposes of this subsection :

(A) The term "reasonably selected technology" means a technology which the Secretary determines it was reasonable for a manufacturer to select, considering (i) the Nation's need to improve the fuel economy of its automobiles, and (ii) the energy savings, economic costs, and lead-time requirements

associated with alternative technologies practicably available to such manufacturer.

(B) The term "Federal standards fuel economy reduction" means the sum of the applicable fuel economy reductions determined under subparagraph (C).

(C) The term "applicable fuel economy reduction" means a number of miles per gallon equal to—

(i) the reduction in a manufacturer's average fuel economy in a model year which results from the application of a category of Federal standards applicable to such model year, and which would not have occurred had Federal standards of such category applicable to model year 1975 remained the only standards of such category in effect, minus

(ii) 0.5 mile per gallon.

(D) Each of the following is a category of Federal standards;

(i) Emissions standards under section 202 of the Clean Air Act, and emissions standards applicable by reason of section 209(b) of such Act.

(ii) Motor vehicle safety standards under the National Traffic and Motor Vehicle Safety Act of 1966.

(iii) Noise emission standards under section 6 of the Noise Control Act of 1972.

(iv) Property loss reduction standards under title I of this Act.

(E) In making the determination under this subparagraph, the Secretary (in accordance with such methods as he shall prescribe by rule) shall assume a production mix for such manufacturer which would have achieved the average fuel economy standard for such model year had standards described in subparagraph (D) applicable to model year 1975 remained the only standards in effect.

(4) The Secretary may, for the purposes of conducting a proceeding under this subsection, consolidate one or more applications filed under this subsection.

(e) For purposes of this section, in determining maximum feasible average fuel economy, the Secretary shall consider—

(1) technological feasibility;

(2) economic practicability;

(3) the effect of other Federal motor vehicle standards on fuel economy; and

(4) the need of the Nation to conserve energy.

(f) (1) The Secretary may, by rule, from time to time, amend any average fuel economy standard prescribed under subsection (a)(3), (b), or (c), so long as such standard, as amended, meets the requirements of subsection (a)(3), (b), or (c), as the case may be.

(2) Any amendment prescribed under this section which has the effect of making any average fuel economy standard more stringent shall be—

(A) promulgated, and

(B) if required by paragraph (4) of subsection (a), submitted to the Congress, at least 18 months prior to the beginning of the model year to which such amendment will apply.

(g) Proceedings under subsection (a)(4) or (d) shall be conducted in accordance with section 553 of title 5, United States Code, except that interested persons shall be entitled to make oral as well as written presentations. A transcript shall be taken of any oral presentations.

(g) The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section. The Secretary shall, before issuing any notice proposing under subsection (a), (b), (d), or (f) of this section, to establish, reduce, or amend an average fuel economy standard, provide the Secretary of Energy with a period of not less than ten days from the receipt of the notice during which the Secretary of Energy may, upon concluding that the proposed standard would adversely affect the conservation goals set by the Secretary of Energy, provide written comments to the Secretary concerning the impacts of the proposed standard upon those goals. To the extent that the Secretary does not revise the proposed standard to take into account any comments by the Secretary of Energy regarding the level of the proposed standard, the Secretary shall include the unaccommodated comments in the notice.

(h) The Secretary shall, before taking action on any final standard under this section or any modification of or exemption from such standard, notify the Secretary of Energy and provide such Secretary with a reasonable period of time to comment thereon.

DETERMINATION OF AVERAGE FUEL ECONOMY

15 U.S.C. 2003

SEC. 503. (a)(1) Average fuel economy for purposes of section 502 (a) and (c) shall be calculated by the EPA Administrator by dividing—

(A) the total number of passenger automobiles manufactured in a given model year by a manufacturer, by

(B) a sum of terms, each term of which is a fraction created by dividing—

(i) the number of passenger automobiles of a given model type manufactured by such manufacturer in such model year, by

(ii) the fuel economy measured for such model type.

(2) Average fuel economy for purposes of section 502(b) shall be calculated in accordance with rules of the EPA Administrator.

(b) (1) In calculating average fuel economy under subsection (a)(1), the EPA Administrator shall separate the total number of passenger automobiles manufactured by a manufacturer into the following two categories:

(A) Passenger automobiles which are domestically manufactured by such manufacturer (plus, in the case of model year 1978 and model year 1979, passenger automobiles which are within the includable base import volume of such manufacturer).

(B) Passenger automobiles which are not domestically manufactured by such manufacturer (and which, in the case of model year 1978 and model year 1979, are not within the includable base import volume of such manufacturer).

The EPA Administrator shall calculate the average fuel economy of each such separate category, and each such category shall be treated as if manufactured by a separate manufacturer for purposes of this part.

(2) For purposes of this subsection :

(A) The term "includable base import volume," with respect to any manufacturer in model year 1978 or 1979, as the case may be, is a number of passenger automobiles which is the lesser of—

- (i) the manufacturer's base import volume, or
- (ii) the number of passenger automobiles calculated by multiplying—

(I) the quotient obtained by dividing such manufacturer's base import volume by such manufacturer's base base¹ production volume, times

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) The term "base import volume" means one-half the sum of—

(i) the total number of passenger automobiles which were not domestically manufactured by such manufacturer during model year 1974 and which were imported by such manufacturer during such model year, plus

(ii) 133 percent of the total number of passenger automobiles which were not domestically manufactured by such manufacturer during the first 9 months of model year 1975 and which were imported by such manufacturer during such 9-month period.

(C) The term "base production volume" means one-half the sum of—

(i) the total number of passenger automobiles manufactured by such manufacturer during model year 1974, plus

¹ Error in law.

(ii) 133 percent of the total number of passenger automobiles manufactured by such manufacturer during the first 9 months of model year 1975.

(D) For purposes of subparagraphs (B) and (C) of this paragraph any passenger automobile imported during model year 1976, but prior to July 1, 1975, shall be deemed to have been manufactured (and imported) during the first 9 months of model year 1975.

(E) An automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.

(F) The fuel economy of each passenger automobile which is imported by a manufacturer in model year 1978 or 1979, as the case may be, and which is not domestically manufactured by such manufacturer, shall be deemed to be equal to the average fuel economy of all such passenger automobiles.

(c) Any reference in this part to automobiles manufactured by a manufacturer shall be deemed—

(1) to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer; and

(2) to exclude all automobiles manufactured (within the meaning of paragraph (1)) during a model year by such manufacturer which are exported prior to the expiration of 30 days following the end of such model year.

(d) (1) Fuel economy for any model type shall be measured, and average fuel economy of a manufacturer shall be calculated, in accordance with testing and calculation procedures established by the EPA Administrator, by rule. Procedures so established with respect to passenger automobiles (other than for purposes of section 506) shall be the procedures utilized by the EPA Administrator for model year 1975 (weighed 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emission tests conducted under section 206 of the Clean Air Act. The EPA Administrator shall report any measurements of fuel economy and any calculations of average fuel economy to the Secretary.

(2) The EPA Administrator shall, by rule, determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

(3) Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months prior to the model year to which such procedures apply.

(e) For purposes of this part (other than section 506), any measurement of fuel economy of a model type, and any calculation of average fuel economy of a manufacturer, shall be rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the EPA Administrator).

(f) The EPA Administrator shall consult and coordinate with the Secretary in carrying out his duties under this section.

JUDICIAL REVIEW

SEC. 504. (a) Any person who may be adversely affected by any rule prescribed under section 501, 502, 503, or 506 may, at any time prior to 60 days after such rule is prescribed (or in the case of an amendment submitted to each House of the Congress under section 502(a)(4), at any time prior to 60 days after the expiration of the 60-day period specified in section 502(a)(5)), file a petition in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be forthwith transmitted by the clerk of such court to the officer who prescribed the rule. Such officer shall thereupon cause to be filed in such court the written submissions and other materials in the proceeding upon which such rule was based. Upon the filing of such petition, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. Findings of the Secretary under section 502(d) shall be set aside by the court on review unless such findings are supported by substantial evidence.

(b) If the petitioner applies to the court in a proceeding under subsection (a) for leave to make additional submissions, and shows to the satisfaction of the court that such additional submissions are material and that there were reasonable grounds for the failure to make such submissions in the administrative proceeding, the court may order the Secretary or the EPA Administrator, as the case may be, to provide additional opportunity to make such submissions. The Secretary or the EPA Administrator, as the case may be, may modify or set aside the rule involved or prescribe a new rule by reason of the additional submissions, and shall file any such modified or new rule in the court, together with such additional

submissions. The court shall thereafter review such new or modified rule.

(c) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(d) The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

INFORMATION AND REPORTS

15 U.S.C. 2005

SEC. 505. (a) (1) Each manufacturer shall submit a report to the Secretary during the 30-day period preceding the beginning of each model year after model year 1977, and during the 30-day period beginning on the 180th day of each such model year. Each such report shall contain (A) a statement as to whether such manufacturer will comply with average fuel economy standards under section 502 applicable to the model year for which such report is made; (B) a plan which describes the steps the manufacturer has taken or intends to take in order to comply with such standards; and (C) such other information as the Secretary may require.

(2) Whenever a manufacturer determines that a plan submitted under paragraph (1) which he stated was sufficient to insure compliance with applicable average fuel economy standards is not sufficient to insure such compliance, he shall submit a report to the Secretary containing a revised plan which specifies any additional measures which such manufacturer intends to take in order to comply with such standards, and a statement as to whether such revised plan is sufficient to insure such compliance.

(3) The Secretary shall prescribe rules setting forth the form and content of the reports required under paragraphs (1) and (2).

(b) (1) For the purpose of carrying out the provisions of this part, the Secretary or the EPA Administrator, or their duly designated agents, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, the EPA Administrator, or such agents deem advisable. The Secretary or the EPA Administrator may require, by general or special orders that any person—

(A) file, in such form as the Secretary or EPA Administrator may prescribe, reports or answers in writing to specific questions relating to any function

of the Secretary or the EPA Administrator under this part, and

(B) provide the Secretary, the EPA Administrator, or their duly designated agents, access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of the Secretary or the EPA Administrator under this part.

Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary or the EPA Administrator within such reasonable period as either may prescribe.

(2) The district courts of the United States for a judicial district in the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a duly authorized subpoena or order of the Secretary, the EPA Administrator, or a duly designated agent of either, issued under paragraph (1), issue an order requiring compliance with such subpoena or order. Any failure to obey such an order of the court may be treated by such court as a contempt thereof.

(3) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) (1) Every manufacturer shall establish and maintain such records, make such reports, conduct such tests, and provide such items and information as the Secretary or the EPA Administrator may, by rule, reasonably require to enable the Secretary or the EPA Administrator to carry out their duties under this part and under any rules prescribed pursuant to this part. Such manufacturer shall, upon request of a duly designated agent of the Secretary or the EPA Administrator who presents appropriate credentials, permit such agent, at reasonable times and in a reasonable manner, to enter the premises of such manufacturer to inspect automobiles and appropriate books, papers, records, and documents. Such manufacturer shall make available all of such items and information in accordance with such reasonable rules as the Secretary or the EPA Administrator may prescribe.

(2) The district courts of the United States may, if a manufacturer refuses to accede to any rule or reasonable request made under paragraph (1), issue an order requiring compliance with such requirement or request. Any failure to obey such an order of the court may be treated by such court as a contempt thereof.

(d) (1) The Secretary and the EPA Administrator shall each disclose any information obtained under this part (other than section 503(d)) to the public in accordance with section 552 of title 5, United States Code, except that information may be withheld from disclosure under subsection (b) (4) of such section only if the Secretary or the EPA Administrator, as the case may be, determines that such information, if disclosed, would

result in significant competitive damage. Any matter described in section 552(b)(4) relevant to any administrative or judicial proceeding under this part may be disclosed in such proceeding.

(2) Measurements and calculations under section 503(d) shall be made available to the public in accordance with section 552 of title 5, United States Code, without regard to subsection (b) of such section.

LABELING

15 U.S.C. 2006

SEC. 506. (a)(1) Except as otherwise provided in paragraph (2), each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, on each automobile manufactured in any model year after model year 1976, in a prominent place, a label—

(A) indicating—

- (i) the fuel economy of such automobile,
- (ii) the estimated annual fuel cost associated with the operation of such automobile, and
- (iii) the range of fuel economy of comparable automobiles (whether or not manufactured by such manufacturer),

as determined in accordance with rules of the EPA Administrator,

(B) containing a statement that written information (as described in subsection (b)(1)) with respect to the fuel economy of other automobiles manufactured in such model year (whether or not manufactured by such manufacturer) is available from the dealer in order to facilitate comparison among the various model types, and

(C) containing any other information authorized or required by the EPA Administrator which relates to information described in subparagraph (A) or (B).

(2) With respect to automobiles—

(A) for which procedures established in the EPA and FEA Voluntary Fuel Labeling Program for Automobiles exist on the date of the enactment of this title, and

(B) which are manufactured in model year 1976 and at least 90 days after such date of enactment, each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, in a prominent place, a label indicating the fuel economy of such automobile, in accordance with such procedures.

(3) The form and content of the labels required under paragraphs (1) and (2), and the manner in which such labels shall be affixed, shall be prescribed by the EPA Administrator by rule. The EPA Administrator may permit a manufacturer to comply with this paragraph by permitting such manufacturer to disclose the infor-

mation required under this subsection on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

(b) (1) The EPA Administrator shall compile and prepare a simple and readily understandable booklet containing data on fuel economy of automobiles manufactured in each model year. Such booklet shall also contain information with respect to estimated annual fuel costs, and may contain information with respect to geographical or other differences in estimated annual fuel costs. The Administrator of the Federal Energy Administration shall publish and distribute such booklets.

(2) The EPA Administrator, not later than July 31, 1976, shall prescribe rules requiring dealers to make available to prospective purchasers information compiled by the EPA Administrator under paragraph (1).

(c) (1) A violation of subsection (a) shall be treated as a violation of section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232). For purposes of the Federal Trade Commission Act (other than sections 5(m) and (18), a violation of subsection (a) shall be treated as an unfair or deceptive act or practice in or affecting commerce.

(2) As used in this section, the term "dealer" has the same meaning as such term has in section 2(e) of the Automobile Information Disclosure Act (15 U.S.C. 1231 (e)) except that in applying such term to this section, the term "automobile" has the same meaning as such term has in section 501(1) of this part.

(d) Any disclosure with respect to fuel economy or estimated annual fuel cost which is required to be made under the provisions of this section shall not create an express or implied warranty under State or Federal law that such fuel economy will be achieved, or that such cost will not be exceeded, under conditions of actual use.

(e) In carrying out his duties under this section, the EPA Administrator shall consult with the Federal Trade Commission, the Secretary, and the Federal Energy Administrator.

UNLAWFUL CONDUCT

SEC. 507. The following conduct is unlawful:

15 U.S.C. 2007

(1) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 502 (other than section 502(b)),

(2) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 502(b), or

(3) the failure of any person (A) to comply with any provision of this part applicable to such person (other than section 502, 506(a), 510, or 511), or (B) to comply with any standard, rule, or order applica-

able to such person which is issued pursuant to such a provision.

CIVIL PENALTY

15 U.S.C. 2008

SEC. 508. (a) (1) If average fuel economy calculations reported under section 503(d) indicate that any manufacturer has violated section 507 (1) or (2), then (unless further measurements of fuel economy, further calculations of average fuel economy, or other information indicates there is no violation of section 507 (1) or (2) the Secretary shall commence a proceeding under paragraph (2) of this subsection. The results of such further measurements, further calculations, and any such other information, shall be published in the Federal Register.

(2) If, on the record after opportunity for agency hearing, the Secretary determines that such manufacturer has violated section 507 (1) or (2), or that any person has violated section 507(3), the Secretary shall assess the penalties provided for under subsection (b). Any interested person may participate in any proceeding under this paragraph.

(3) (A) (i) Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established under section 502 (a) or (c) (determined without regard to any adjustment under section 502(d)), such manufacturer shall be entitled to a credit, calculated under clause (ii), which shall be—

(I) deducted from the amount of any civil penalty which has been or may be assessed against such manufacturer for a violation of section 507(1) occurring in the model year immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(II) to the extent that such credit is not deducted pursuant to subclause (I), deducted from the amount of any civil penalty assessed against such manufacturer for a violation of section 507(1) occurring in the model year immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(ii) The amount of credit to which a manufacturer is entitled under clause (i) shall be equal to—

(I) \$5 for each tenth of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer in the model year in which the credit is earned pursuant to clause (i) exceeds the applicable average fuel economy standard established under section 502 (a) or (c), multiplied by

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) (i) Whenever the average fuel economy of a class of automobiles which are not passenger automobiles and which are manufactured by a manufacturer in a particular model year exceeds an average fuel economy standard applicable to automobiles of such class under section 502(b), such manufacturer shall be entitled to a credit, calculated under clause (ii), which shall be—

(I) deducted from the amount of any civil penalty which has been or may be assessed against such manufacturer for a violation of section 507(2) occurring in the model year immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(II) to the extent that such credit is not deducted pursuant to subclause (I), deducted from the amount of any such civil penalty assessed against such manufacturer for a violation of section 507(2) occurring in the model year immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(ii) The amount of credit to which a manufacturer is entitled under clause (i) shall be equal to—

(I) \$5 for each tenth of a mile per gallon by which the average fuel economy of the automobiles of such class manufactured by such manufacturer in the model year in which the credit is earned pursuant to clause (i) exceeds the applicable average fuel economy standard established under section 502(b), multiplied by

(II) the total number of automobiles of such class manufactured by such manufacturer during such model year.

(C) Whenever a civil penalty has been assessed and collected under this section from a manufacturer who is entitled to a credit under this paragraph with respect to such civil penalty, the Secretary of the Treasury shall refund to such manufacturer the amount of credit to which such manufacturer is so entitled, except that the amount of such refund shall not exceed the amount of the civil penalty so collected.

(D) The Secretary may prescribe rules for purposes of carrying out the provisions of this paragraph.

(b) (1) (A) Any manufacturer whom the Secretary determines under subsection (a) to have violated a provision of section 507(1), shall be liable to the United States for a civil penalty equal to (i) \$5 for each tenth of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 502 (a) and (c), multiplied by (ii) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) Any manufacturer whom the Secretary determines under subsection (a) to have violated section 507 (2) shall be liable to the United States for a civil penalty equal to (i) \$5 for each tenth of a mile per gallon by which the applicable average fuel economy standard exceeds the average fuel economy of automobiles to which such standard applies, and which are manufactured by such manufacturer during the model year in which the violation occurs, multiplied by (ii) the total number of automobiles to which such standard applies and which are manufactured by such manufacturer during such model year.

(2) Any person whom the Secretary determines under subsection (a) to have violated a provision of section 507 (3) shall be liable to the United States for a civil penalty of not more than \$10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this paragraph.

(3) The amount of such civil penalty shall be assessed by the Secretary by written notice. The Secretary shall have the discretion to compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection against any person, except that any civil penalty assessed for a violation of section 507 (1) or (2) may be so compromised, modified, or remitted only to the extent—

(A) necessary to prevent the insolvency or bankruptcy of such manufacturer,

(B) such manufacturer shows that the violation of section 507 (1) or (2) resulted from an act of God, a strike, or a fire, or

(C) the Federal Trade Commission has certified that modification of such penalty is necessary to prevent a substantial lessening of competition, as determined under paragraph (4).

The Attorney General shall collect any civil penalty for which a manufacturer is liable under this subsection in a civil action under subsection (c) (2) (unless the manufacturer pays such penalty to the Secretary).

(4) Not later than 30 days after a determination by the Secretary under subsection (a) (2) that a manufacturer has violated section 507 (1) or (2), such manufacturer may apply to the Federal Trade Commission for a certification under this paragraph. If the manufacturer shows and the Federal Trade Commission determines that modification of the civil penalty for which such manufacturer is otherwise liable is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such penalty was assessed, the Commission shall so certify. The certification shall specify the maximum amount that such penalty may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application

under this paragraph not later than 90 days after the application is filed with the Commission. A proceeding under this paragraph shall not have the effect of delaying the manufacturer's liability under this section for a civil penalty for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this paragraph becomes final shall be paid to the court in which the penalty is collected, and shall (except as otherwise provided in paragraph (5)) to be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

(5) Whenever a civil penalty has been assessed and collected from a manufacturer under this section, and is being held by a court in accordance with paragraph (4), and the Secretary subsequently determines to modify such civil penalty pursuant to paragraph (3)(C) the Secretary shall direct the court to remit the appropriate amount of such penalty to such manufacturer.

(6) A claim of the United States for a civil penalty assessed against a manufacturer under subsection (b)(1) shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to paragraph (4)).

(c)(1) Any interested person may obtain review of a determination (A) of the Secretary pursuant to which a civil penalty has been assessed under subsection (b), or (B) of the Federal Trade Commission under subsection (b)(4), in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5, United States Code.

(2) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

EFFECT ON STATE LAW

15 U.S.C. 2009

SEC. 509. (a) Whenever an average fuel economy standard established under this part is in effect, no State or political subdivision of a State shall have authority to adopt or enforce any law or regulation relating to fuel economy standards or average fuel economy standards applicable to automobiles covered by such Federal standard.

(b) Whenever any requirement under section 506 is in effect with respect to any automobile, no State or political subdivision of a State shall have authority to adopt or enforce any law or regulation with respect to the disclosure of fuel economy of such automobile, or of fuel cost associated with the operation of such automobile, if such law or regulation is not identical with such requirement.

(c) Nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing requirements with respect to fuel economy of automobiles procured for its own use.

**USE OF FUEL EFFICIENT PASSENGER AUTOMOBILES
BY THE FEDERAL GOVERNMENT**

15 U.S.C. 2010

SEC. 510. (a) The President shall, within 120 days after the date of enactment of this title, promulgate rules which shall require that all passenger automobiles acquired by all executive agencies in each fiscal year which begins after such date of enactment achieve a fleet average fuel economy for such year not less than—

(1) 18 miles per gallon, or

(2) the average fuel economy standard applicable under section 502(a) for the model year which includes January 1 of such fiscal year, whichever is greater.

(b) As used in this section :

(1) The term "fleet average fuel economy" means (A) the total number of passenger automobiles acquired in a fiscal year to which this section applies by all executive agencies (excluding passenger automobiles designed to perform combat related missions for the Armed Forces or designed to be used in law enforcement work or emergency rescue work), divided by (B) a sum of terms, each term of which is a fraction created by dividing—

(i) the number of passenger automobiles so acquired of a given model type, by

(ii) the fuel economy of such model type.

(2) The term "executive agency" has the same meaning as such term has for purposes of section 105 of title 5, United States Code.

(3) The term "acquired" means leased for a period of 60 continuous days or more, or purchased.

RETROFIT DEVICES

SEC. 511. (a) The Federal Trade Commission shall establish a program for systematically examining fuel economy representations made with respect to retrofit devices. Whenever the Commission has reason to believe that any such representation may be inaccurate, it shall request the EPA Administrator to evaluate, in accordance with subsection (b), the retrofit device with respect to which such representation was made.

15 U.S.C. 2011

(b)(1) Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit device are accurate.

(2) If under paragraph (1) the EPA Administrator tests, or causes to be tested, any retrofit device upon the application of a manufacturer of such device, such manufacturer shall supply, at his own expense, one or more samples of such device to the Administrator and shall be liable for the costs of testing which are incurred by the Administrator. The procedures for testing retrofit devices so supplied may include a requirement for preliminary testing by a qualified independent testing laboratory, at the expense of the manufacturer of such device.

(c) The EPA Administrator shall publish in the Federal Register summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

- (1) the effect of any retrofit device on fuel economy;
- (2) the effect of any such device on emissions of air pollutants; and
- (3) any other information which the Administrator determines to be relevant in evaluating such device.

Such summary and conclusions shall also be submitted to the Secretary and the Federal Trade Commission.

(d) Within 180 days after the date of enactment of this title, the EPA Administrator shall, by rule, establish—

- (1) testing and other procedures for evaluating the extent to which retrofit devices affect fuel economy and emissions of air pollutants, and
- (2) criteria for evaluating the accuracy of fuel economy representations made with respect to retrofit devices.

(e) For purposes of this section the term "retrofit device" means any component, equipment, or other device—

(1) which is designed to be installed in or on an automobile (as an addition to, as a replacement for, or through alteration or modification of, any original component, equipment, or other device); and

(2) which any manufacturer, dealer, or distributor of such device represents will provide higher fuel economy than would have resulted with the automobile as originally equipped,

as determined under rules of the Administrator. Such term also includes a fuel additive for use in an automobile.

REPORTS TO CONGRESS

15 U.S.C. 2012

SEC. 512. (a) Within 180 days after the date of enactment of this title, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings and containing conclusions and recommendations with respect to (1) a requirement that each new automobile be equipped with a fuel flow instrument reading directly in miles per gallon, and (2) the most feasible means of equipping used automobiles with such instruments. Such report shall include an examination of the effectiveness of such instruments in promoting voluntary reductions in fuel consumption, the cost of such instruments, means of encouraging automobile purchasers to voluntarily purchase automobiles equipped with such instruments, and any other factor bearing on the cost and effectiveness of such instruments and their use.

(b) (1) Within 180 days after the date of enactment of this title the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings and containing conclusions and recommendations with respect to whether or not electric vehicles and other vehicles not consuming fuel (as defined in the first sentence of section 501(5)) should be covered by this part. Such report shall include an examination of the extent to which any such vehicle should be included under the provisions of this part, the manner in which energy requirements of such vehicles may be compared with energy requirements of fuel-consuming vehicles, the extent to which inclusion of such vehicles would stimulate their production and introduction into commerce, and any recommendations for legislative action.

(2) As used in this subsection, the term "electric vehicle" means vehicle powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current.

NATIONAL TRAFFIC AND MOTOR VEHICLE
SAFETY ACT OF 1966

(211)



NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT OF 1966

As Amended through December 1, 1974

AN ACT

To provide for a coordinated national safety program and establishment of safety standards for motor vehicles in interstate commerce to reduce accidents involving motor vehicles and to reduce the deaths and injuries occurring in such accidents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress hereby declares that the purpose of this Act is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents. Therefore, Congress determines that it is necessary to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development; and to expand the national driver register.

TITLE I—MOTOR VEHICLE SAFETY STANDARDS

SEC. 101. This Act may be cited as the "National Traffic and Motor Vehicle Safety Act of 1966". 15 U.S.C. 1381

PART A—GENERAL PROVISIONS

SEC. 102. As used in this title—

15 U.S.C. 1391

(1) "Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles.

(2) "Motor vehicle safety standards" means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria.

(3) "Motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(4) "Motor vehicle equipment" means any system, part, or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as any accessory, or addition to the motor vehicle, and any device, article, or apparel not a system, part, or component of a motor vehicle (other than medicines, or eyeglasses prescribed by a physician or other duly licensed practitioner), which is manufactured, sold, delivered, offered, or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users from risk of accident, injury, or death.

(5) "Manufacturer" means any person engaged in the manufacturing or assembling of motor vehicles or motor vehicle equipment, including any person importing motor vehicles or motor vehicle equipment for resale.

(6) "Distributor" means any person primarily engaged in the sale and distribution of motor vehicles or motor vehicle equipment for resale.

(7) "Dealer" means any person who is engaged in the sale and distribution of new motor vehicles or motor vehicle equipment primarily to purchasers who in good faith purchase any such vehicle or equipment for purposes other than resale.

(8) "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(9) "Interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State.

(10) "Secretary" means the Secretary of Transportation.

(11) "Defect" includes any defect in performance, construction, components, or materials in motor vehicles or motor vehicle equipment.

(12) "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(13) "Vehicle Equipment Safety Commission" means the Commission established pursuant to the joint resolution of the Congress relating to highway traffic safety, approved August 20, 1958 (72 Stat. 635), or as it may be hereafter reconstituted by law.

(14) "Schoolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools; and

(15) "Schoolbus equipment" means equipment designed primarily as a system, part, or component of a schoolbus, or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory or addition to a schoolbus.

SEC. 103. (a) The Secretary shall establish by order appropriate Federal motor vehicle safety standards. Each such Federal motor vehicle safety standard shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms.

(b) The Administrative Procedure Act shall apply to all orders establishing, amending, or revoking a Federal motor vehicle safety standard under this title.

(c) Each order establishing a Federal motor vehicle safety standard shall specify the date such standard is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Whenever a Federal motor vehicle safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(e) The Secretary may by order amend or revoke any Federal motor vehicle safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(f) In prescribing standards under this section, the Secretary shall—

(1) consider relevant available motor vehicle safety data, including the results of research, development, testing and evaluation activities conducted pursuant to this Act;

(2) consult with the Vehicle Equipment Safety Commission, and such other State or interstate agencies (including legislative committees) as he deems appropriate;

(3) consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed: and

(4) consider the extent to which such standards will contribute to carrying out the purposes of this Act.

(g) In prescribing safety regulations covering motor vehicles subject to part II of the Interstate Commerce Act, as amended (49 U.S.C. 301 et seq.), or the Transportation of Explosives Act, as amended (18 U.S.C. 831-835), the Interstate Commerce Commission shall not adopt or continue in effect any safety regulation which differs from a motor vehicle safety standard issued by the Secretary under this title, except that nothing in this subsection shall be deemed to prohibit the Interstate Commerce Commission from prescribing for any motor vehicle operated by a carrier subject to regulation under either or both of such Acts, a safety regulation which imposes a higher standard of performance subsequent to its manufacture than that required to comply with the applicable Federal standard at the time of manufacture.

(h) The Secretary shall issue initial Federal motor vehicle safety standards based upon existing safety standards on or before January 31, 1967. On or before January 31, 1968, the Secretary shall issue new and revised Federal motor vehicle safety standards under this title.

(i) (1) (A) Not later than 6 months after the date of enactment of this subsection, the Secretary shall publish proposed Federal motor vehicle safety standards to be applicable to schoolbuses and schoolbus equipment. Such proposed standards shall include minimum standards for the following aspects of performance:

- (i) Emergency exits.
- (ii) Interior protection for occupants.
- (iii) Floor strength.
- (iv) Seating systems.

(v) Crash worthiness of body and frame (including protection against rollover hazards).

- (vi) Vehicle operating systems.
- (vii) Windows and windshields.
- (viii) Fuel systems.

(B) Not later than 15 months after the date of enactment of this subsection, the Secretary shall promulgate Federal motor vehicle safety standards which shall provide minimum standards for those aspects of performance set out in clauses (i) through (viii) of subparagraph (A) of this paragraph, and which shall apply to each schoolbus and item of schoolbus equipment which is manufactured in or imported into the United States on or after April 1, 1977.

(2) The Secretary may prescribe regulations requiring that any schoolbus be test driven by the manufacturer before introduction into commerce.

(3) Not later than six months after the date of enactment of this section, the Secretary shall conduct a study and report to Congress on (A) the factors relating to the schoolbus vehicle which contribute to the occurrence of schoolbus accidents and resultant injuries, and (B) actions which can be taken to reduce the likelihood of occurrence of such accidents and severity of such injuries. Such study shall consider, among other things, the extent to which injuries may be reduced through the use of seat belts and other occupant restraint systems in schoolbus accidents, and an examination of the extent to which the age of schoolbuses increases the likelihood of accidents and resultant injuries.

SEC. 104.* (a)(1) The Secretary shall establish a National Motor Vehicle Safety Advisory Council, a majority of which shall be representatives of the general public, including representatives of State and local governments, and the remainder shall include representatives of motor vehicle manufacturers, motor vehicle equipment manufacturers, and motor vehicle dealers.

15 U.S.C. 1393

(2) For the purposes of this section, the term "representative of the general public" means an individual who (A) is not in the employ of, or holding any official relation to any person who is (i) a manufacturer, dealer, or distributor, or (ii) a supplier of any manufacturer, dealer, or distributor, (B) does not own stock or bonds of substantial value in any person described in subparagraph (A) (i) or (ii), and (C) is not in any other manner directly or indirectly pecuniarily interested in such a person. The Secretary shall publish the names of the members of the Council annually and shall designate which members represent the general public. The Chairman of the Council shall be chosen by the Council from among the members representing the general public.

(b) The Secretary shall consult with the Advisory Council on motor vehicle safety standards under this Act.

(c) Members of the National Motor Vehicle Safety Advisory Council may be compensated at a rate not to exceed \$100 per diem (including travel time) when engaged in the actual duties of the Advisory Council. Such members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2), for persons in the Government service employed intermittently. Payments under this section shall not render members of the Advisory Council employees or officials of the United States for any purpose.

SEC. 105.(a)(1) In a case of actual controversy as to the validity of any order under section 103, any person who will be adversely affected by such order when it is effective may at any time prior to the sixtieth day after

15 U.S.C. 1394

*Section 104 is repealed effective October 1, 1977.

such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28 of the United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the order in accordance with section 10 of the Administrative Procedure Act (5 U.S.C. 1009) and to grant appropriate relief as provided in such section.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary of any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(b) A certified copy of the transcript of the record and proceedings under this section shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this title, irrespective of whether proceedings with respect to the order have previously been initiated or become final under subsection (a).

SEC. 106. (a) The Secretary shall conduct research, testing, development, and training necessary to carry out the purposes of this title, including, but not limited to—

(1) collecting data from any source for the purpose of determining the relationship between motor vehicle

or motor vehicle equipment performance characteristics and (A) accidents involving motor vehicles, and (B) the occurrence of death, or personal injury resulting from such accidents;

(2) procuring (by negotiation or otherwise) experimental and other motor vehicles or motor vehicle equipment for research and testing purposes;

(3) selling or otherwise disposing of test motor vehicles and motor vehicle equipment and reimbursing the proceeds of such sale or disposal into the current appropriation available for the purpose of carrying out this title.

(b) The Secretary is authorized to conduct research, testing, development, and training as authorized to be carried out by subsection (a) of this section by making grants for the conduct of such research, testing, development, and training to States, interstate agencies, and non-profit institutions.

(c) Whenever the Federal contribution for any research or development activity authorized by this Act encouraging motor vehicle safety is more than minimal, the Secretary shall include in any contract, grant, or other arrangement for such research or development activity, provisions effective to insure that all information, uses, processes, patents, and other developments resulting from that activity will be made freely and fully available to the general public. Nothing herein shall be construed to deprive the owner of any background patent of any right which he may have thereunder.

Sec. 107. The Secretary is authorized to advise, assist, and cooperate with, other Federal departments and agencies, and State and other interested public and private agencies, in the planning and development of—

(1) motor vehicle safety standards;

(2) methods for inspecting and testing to determine compliance with motor vehicle safety standards.

Sec. 108. (a) (1) No person shall—

15 U.S.C. 1397

(A) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this title unless it is in conformity with such standard except as provided in subsection (b) of this section;

(B) fail or refuse access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 112; fail to keep specified records in accordance with such section; or fail or refuse to permit impounding, as required under section 112(a);

(C) fail to issue a certificate required by section 114, or issue a certificate to the effect that a motor vehicle or item of motor vehicle equipment conforms to all ap-

plicable Federal motor vehicle safety standards, if such person in the exercise of due care has reason to know that such certificate is false or misleading in a material respect;

(D) fail—

(i) to furnish notification,

(ii) to remedy any defect or failure to comply,

or

(iii) to maintain records,

as required by part B of this title; or fail to comply with any order or other requirement applicable to any manufacturer, distributor, or dealer pursuant to such part B;

(E) fail to comply with any rule, regulation, or order issued under section 112 or 114; and

(F) to fail to comply with regulations of the Secretary under section 103(i)(2).

(2) (A) No manufacturer, distributor, dealer, or motor vehicle repair business shall knowingly render inoperative, in whole or part, any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard, unless such manufacturer, distributor, dealer, or repair business reasonably believes that such vehicle or item of equipment will not be used (other than for testing or similar purposes in the course of maintenance or repair) during the time such device or element of design is rendered inoperative. For purposes of this paragraph, the term "motor vehicle repair business" means any person who holds himself out to the public as in the business of repairing motor vehicles or motor vehicle equipment for compensation.

(B) The Secretary may by regulation exempt any person from this paragraph if he determines that such exemption is consistent with motor vehicle safety and the purposes of this Act. The Secretary may prescribe regulations defining the term "render inoperative".

(C) This paragraph shall not apply with respect to the rendering inoperative of (i) any safety belt interlock (as defined in section 125(f)(1)) or (ii) any continuous buzzer (as defined in section 125 (f)(4)) designed to indicate that safety belts are not in use.

(D) Paragraph (1)(A) of this subsection shall not apply to the sale or offering for sale of any motor vehicle which has such a buzzer or interlock rendered inoperative by a dealer at the request of the first purchaser of such vehicle.

(b) (1) Paragraph (1)(A) of subsection (a) shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any motor vehicle or motor vehicle equipment after the first purchase of it in good faith for purposes other than resale. In order to assure a continuing and effective national traffic safety program, it is the policy of Congress to en-

courage and strengthen the enforcement of State inspection of used motor vehicles. Therefore to that end the Secretary shall conduct a thorough study and investigation to determine the adequacy of motor vehicle safety standards and motor vehicle inspection requirements and procedures applicable to used motor vehicles in each State, and the effect of programs authorized by this title upon such standards, requirements, and procedures for used motor vehicles, and report to Congress as soon as practicable but not later than one year after the date of enactment of this title, the results of such study, and recommendations for such additional legislation as he deems necessary to carry out the purposes of this Act. As soon as practicable after the submission of such report, but no later than one year from the date of submission of such report, the Secretary, after consultation with the Council and such interested public and private agencies and groups as he deems advisable, shall establish uniform Federal motor vehicle safety standards applicable to all used motor vehicles. Such standards shall be expressed in terms of motor vehicle safety performance. The Secretary is authorized to amend or revoke such standards pursuant to this Act.

(2) Paragraph (1) (A) of subsection (a) shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such vehicle or item of motor vehicle equipment is not in conformity with applicable Federal motor vehicle safety standards, or to any person who, prior to such first purchase, holds a certificate issued by the manufacturer or importer of such motor vehicle or motor vehicle equipment, to the effect that such vehicle or equipment conforms to all applicable Federal motor vehicle safety standards, unless such person knows that such vehicle or equipment does not so conform.

(3) A motor vehicle or item of motor vehicle equipment offered for importation in violation of paragraph (1) (A) of subsection (a) shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary; except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such motor vehicle or item of motor vehicle equipment into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or item of motor vehicle equipment will be brought into conformity with any applicable Federal motor vehicle safety standard prescribed under this title, or will be exported or abandoned to the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the temporary importation of any motor vehicle or item of motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

(5) Paragraph (1) (A) of subsection (a) shall not apply in the case of a motor vehicle or item of motor vehicle equipment intended solely for export, and so labeled or tagged on the vehicle or item itself and on the outside of the container, if any, which is exported.

(c) Compliance with any Federal motor vehicle safety standard issued under this title does not exempt any person from any liability under common law.

15 U.S.C. 1398

SEC. 109. (a) Whoever violates any provision of section 108, or any regulation issued thereunder, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. Such violation of a provision of section 108, or regulations issued thereunder, shall constitute a separate violation with respect to each motor vehicle or item of motor vehicle equipment or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty shall not exceed \$800,000 for any related series of violations.

(b) Any such civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

15 U.S.C. 1399

SEC. 110. (a) The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title (or rules, regulations or orders thereunder), or to restrain the sale, offer for sale, or the introduction or delivery for introduction, in interstate commerce, or the importation into the United States, of any motor vehicle or item of motor vehicle equipment which is determined, prior to the first purchase of such vehicle in good faith for purposes other than resale, not to conform to applicable Federal motor vehicle safety standards prescribed pursuant to this title, or to contain a defect (A) which relates to motor vehicle safety and (B) with respect to which notification has been given under section 151 or has been required to be given under section 152(b), upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance or to remedy the defect. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this

section, which violation also constitutes a violation of this title, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Except as provided in section 155(a), actions under subsection (a) of this section and section 109(a) of this title may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) In any actions brought under subsection (a) of this section and section 109(a) of this title, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(e) It shall be the duty of every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of said manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions and requirements may be made upon said manufacturer by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon said manufacturer, and in default of such designation of such agent, service of process, notice, order, requirement or decision in any proceeding before the Secretary or in any judicial proceeding for enforcement of this title or any standards prescribed pursuant to this title may be made by posting such process, notice, order, requirement or decision in the Office of the Secretary.

SEC. 111. (a) If any motor vehicle or item of motor vehicle equipment is determined not to conform to applicable Federal motor vehicle safety standards, or contains a defect which relates to motor vehicle safety, after the sale of such vehicle or item of equipment by a manufacturer or a distributor to a distributor or a dealer and prior to the sale of such vehicle or item of equipment by such distributor or dealer:

(1) The manufacturer or distributor, as the case may be, shall immediately repurchase such vehicle or item of motor vehicle equipment from such distributor or dealer at the price paid by such distributor or dealer, plus all transportation charges involved and a reasonable reimbursement of not less than 1 per centum per month of such price paid prorated from

the date of notice of such nonconformance to the date of repurchase by the manufacturer or distributor; or

(2) In the case of motor vehicles, the manufacturer or distributor, as the case may be, at his own expense, shall immediately furnish the purchasing distributor or dealer the required conforming part or parts or equipment for installation by the distributor or dealer on or in such vehicle and for the installation involved the manufacturer shall reimburse such distributor or dealer for the reasonable value of such installation plus a reasonable reimbursement of not less than 1 per centum per month of the manufacturer's or distributor's selling price prorated from the date of notice of such nonconformance to the date such vehicle is brought into conformance with applicable Federal standards: *Provided, however,* That the distributor or dealer proceeds with reasonable diligence with the installation after the required part, parts or equipment are received.

(b) In the event any manufacturer or distributor shall refuse to comply with the requirements of paragraphs (1) and (2) of subsection (a), then the distributor or dealer, as the case may be, to whom such nonconforming vehicle or equipment has been sold may bring suit against such manufacturer or distributor in any district court of the United States in the district in which said manufacturer or distributor resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damage by him sustained, as well as all court costs plus reasonable attorneys' fees. Any action brought pursuant to this section shall be forever barred unless commenced within three years after the cause of action shall have accrued.

(c) The value of such installations and such reasonable reimbursements as specified in subsection (a) of this section shall be fixed by mutual agreement of the parties, or failing such agreement, by the court pursuant to the provisions of subsection (b) of this section.

SEC. 112. (a) (1) The Secretary is authorized to conduct any inspection or investigation—

(A) which may be necessary to enforce this title or any rules, regulations, or orders issued thereunder, or

(B) which relates to the facts, circumstances, conditions, and causes of any motor vehicle accident and which is for the purposes of carrying out his functions under this Act.

The Secretary shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with this title or any rules, regulations, or orders issued thereunder, for appropriate action. In making investigations under subparagraph (B), the Secretary shall cooperate with

appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

(2) For purposes of carrying out paragraph (1), officers or employees duly designated by the Secretary, upon presenting appropriate credentials and written notice to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

(A) to enter (i) any factory, warehouse, or establishment in which motor vehicles or items of motor vehicle equipment are manufactured, or held for introduction into interstate commerce or are held for sale after such introduction, or (ii) any premises where a motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident is located;

(B) to impound for a period not to exceed 72 hours, any motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident; and

(C) to inspect any factory, warehouse, establishment, vehicle, or equipment referred to in subparagraph (A) or (B).

Each inspection under this paragraph shall be commenced and completed with reasonable promptness.

(3) (A) Whenever, under the authority of paragraph (2)(B), the Secretary inspects or temporarily impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to part II of the Interstate Commerce Act) or an item of motor vehicle equipment, he shall pay reasonable compensation to the owner of such vehicle to the extent that such inspection or impounding results in the denial of the use of the vehicle to its owner or in the reduction in value of the vehicle.

(B) As used in this subsection, "motor vehicle accident" means an occurrence associated with the maintenance, use, or operation of a motor vehicle or item of motor vehicle equipment in or as a result of which any person suffers death or personal injury, or in which there is property damage.

(b) Every manufacturer of motor vehicles and motor vehicle equipment shall establish and maintain such records and every manufacturer, dealer, or distributor shall make such reports, as the Secretary may reasonably require to enable him to determine whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this title or any rules, regulations, or orders issued thereunder. Nothing in this subsection shall be construed as imposing record-keeping requirements on distributors or dealers, except those requirements imposed under section 158 and regulations and orders promulgated thereunder.

(c) (1) For the purpose of carrying out the provisions of this title, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this title, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this title.

(3) The Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this title. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or paragraph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage which are paid witnesses in the courts of the United States.

(6) (A) The Secretary is authorized to request from any department, agency or instrumentality of the Federal Government such statistics, data, program reports, and other materials as he deems necessary to carry out his functions under this title; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such statistics, data, program reports, and other materials to the Department of Transportation upon request made by the Secretary. Nothing in this subparagraph shall be deemed to affect any provision of law limiting the authority of an agency, department, or instrumentality of the Federal Government to provide information to another agency, department, or instrumentality of the Federal Government.

(B) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instru-

mentality to assist in carrying out the duties of the Secretary under this title.

(d) Every manufacturer of motor vehicles and motor vehicle equipment shall provide to the Secretary such performance data and other technical data related to performance and safety as may be required to carry out the purposes of this Act. The Secretary is authorized to require the manufacturer to give such notification of such performance and technical data as the Secretary determines necessary to carry out the purposes of this Act in the following manner—

(1) to each prospective purchaser of a motor vehicle or item of equipment before its first sale for purposes other than resale at each location where any such manufacturer's vehicles or items of motor vehicle equipment are offered for sale by a person with whom such manufacturer has a contractual, proprietary, or other legal relationship in a manner determined by the Secretary to be appropriate which may include, but is not limited to, printed matter (A) available for retention by such prospective purchaser and (B) sent by mail to such prospective purchaser upon his request; and

(2) to the first person who purchases a motor vehicle or item of equipment for purposes other than resale, at the time of such purchase, in printed matter placed in the motor vehicle or attached to or accompanying the item of motor vehicle equipment.

(e) Except as otherwise provided in section 158(a)(2) and section 113(b), all information reported to or otherwise obtained by the Secretary or his representative pursuant to this title which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

SEC. 113. (a) Whenever any manufacturer opposes an action of the Secretary under section 103, or under any other provision of this Act, on the ground of increased cost, the manufacturer shall submit such cost information (in such detail as the Secretary may by regulation or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall thereafter promptly prepare an evaluation of such cost information.

(b) (1) Subject to paragraph (2), such cost information together with the Secretary's evaluation thereof, shall be

available to the public. Notice of the availability of such information shall be published in the Federal Register.

(2) If the manufacturer satisfies the Secretary that any portion of such information contains a trade secret or other confidential matter, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret or other confidential matter, except that any such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this title. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

(c) For purposes of this section, the term "cost information" means information with respect to alleged cost increases resulting from action by the Secretary, in such form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

(d) The Secretary is authorized to establish rules and regulations prescribing forms and procedures for the submission of cost information under this section.

(e) Nothing in this section shall be construed to restrict the authority of the Secretary to obtain, or require submission of, information under any provision of this Act.

SEC. 114. Every manufacturer or distributor of a motor vehicle or motor vehicle equipment shall furnish to the distributor or dealer at the time of delivery of such vehicle or equipment by such manufacturer or distributor the certification that each such vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards. In the case of an item of motor vehicle equipment such certification may be in the form of a label or tag on such item or on the outside of a container in which such item is delivered. In the case of a motor vehicle such certification shall be in the form of a label or tag permanently affixed to such motor vehicle.

SEC. 115. The Secretary shall carry out the provisions of this Act through a National Traffic Safety Agency (hereinafter referred to as the "Bureau"), which he shall establish in the Department of Commerce. The Bureau shall be headed by a Traffic Safety Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a citizen of the United States, and shall be appointed with due regard for his fitness to discharge efficiently the powers and the duties delegated to him pursuant to this Act. The Director shall perform such duties as are delegated to him by the Secretary.

15 U.S.C. 1403

15 U.S.C. 1404

SEC. 116. Nothing contained herein shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws, or to prohibit under the antitrust laws of the United States any conduct that would be lawful under such laws.

15 U.S.C. 1405

SEC. 117. (a) The Act entitled "An Act to provide that hydraulic brake fluid sold or shipped in commerce for use in motor vehicles shall meet certain specifications prescribed by the Secretary of Commerce", approved September 5, 1962 (76 Stat. 437; Public Law 87-637), and the Act entitled "An Act to provide that seat belts sold or shipped in interstate commerce for use in motor vehicles shall meet certain safety standards", approved December 13, 1963 (77 Stat. 361; Public Law 88-201), are hereby repealed.

15 U.S.C. 1301
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(b) Whoever, prior to the date of enactment of this section, knowingly and willfully violates any provision of law repealed by subsection (a) of this section, shall be punished in accordance with the provisions of such laws as in effect on the date such violation occurred.

(c) All standards issued under authority of the laws repealed by subsection (a) of this section which are in effect at the time this section takes effect, shall continue in effect as if they had been effectively issued under section 103 until amended or revoked by the Secretary, or a court of competent jurisdiction by operation of law.

(d) Any proceeding relating to any provision of law repealed by subsection (a) of this section which is pending at the time this section takes effect shall be continued by the Secretary as if this section had not been enacted, and orders issued in any such proceeding shall continue in effect as if they had been effectively issued under section 103 until amended or revoked by the Secretary in accordance with this title, or by operation of law.

(e) The repeals made by subsection (a) of this section shall not affect any suit, action, or other proceeding lawfully commenced prior to the date this section takes effect, and all such suits, actions, and proceedings, shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this section had not been enacted. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States in relation to the discharge of official duties under any provision of law repealed by subsection (a) of this section shall abate by reason of such repeal, but the court, upon motion or supplemental petition filed at any time within 12 months after the date of enactment of this section showing the necessity for the survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained.

15 U.S.C. 1406

SEC. 118. The Secretary, in exercising the authority under this title, shall utilize the services, research and testing facilities of public agencies to the maximum extent practicable in order to avoid duplication.

15 U.S.C. 1407

SEC. 119. The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this title.

15 U.S.C. 1408

SEC. 120. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on July 1 of each year a comprehensive report on the administration of this Act for the preceding calendar year. Such report shall include but not be restricted to (1) a thorough statistical compilation of the accidents and injuries occurring in such year; (2) a list of Federal motor vehicle safety standards prescribed or in effect in such year; (3) the degree of observance of applicable Federal motor vehicle standards; (4) a summary of all current research grants and contracts together with a description of the problems to be considered by such grants and contracts; (5) an analysis and evaluation, including relevant policy recommendations, of research activities completed and technological progress achieved during such year; (6) a statement of enforcement actions including judicial decisions, settlements, or pending litigation during such year; and (7) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the motoring public.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to promote co-operation among the several States in the improvement of traffic safety and to strengthen the national traffic safety program.

15 U.S.C. 1409

SEC. 121. There are authorized to be appropriated for the purpose of carrying out this Act, not to exceed \$13,000,000 for the transition period July 1, 1976, through September 30, 1976, \$60,000,000 for the fiscal year ending September 30, 1977, and \$60,000,000 for the fiscal year ending September 30, 1978.

15 U.S.C. 1403
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SEC. 122. The provisions of this title for certification of motor vehicles and items of motor vehicle equipment shall take effect on the effective date of the first standard actually issued under section 103 of this title.

15 U.S.C. 1410

SEC. 123. (a) Except as provided in subsection (d) of this section, upon application by a manufacturer at such time, in such manner, and containing such information as required in this section and as the Secretary shall prescribe, the Secretary may, after publication of notice and opportunity to comment and under such terms and conditions and to such extent as he deems appropriate, temporarily exempt or renew the exemption of a motor vehicle from any motor vehicle safety standard established under this title if he finds—

(1) (A) that compliance would cause such manufacturer substantial economic hardship and that the manufacturer has, in good faith, attempted to comply with each standard from which it requests to be exempted.

(B) that such temporary exemption would facilitate the development or field evaluation of new motor vehicle safety features which provide a level of safety which is equivalent to or exceeds the level of safety established in each standard from which an exemption is sought,

(C) that such temporary exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of such vehicle, or

(D) that requiring compliance would prevent a manufacturer from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles; and

(2) that such temporary exemption would be consistent with the public interest and the objectives of the Act.

Notice of each decision to grant a temporary exemption and the reasons for granting it shall be published in the Federal Register.

(b) The Secretary shall require permanent labeling of each exempted motor vehicle. Such label shall either name or describe each of the standards from which the motor vehicle is exempted and be affixed to such exempted vehicles. The Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than the resale of such exempted motor vehicle in such manner as he deems appropriate.

(c) (1) No exemption or renewal granted under paragraph (1)(A) of subsection (a) of this section shall be granted for a period longer than three years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a).

(2) No exemption or renewal granted under paragraph (1)(B), (1)(C), or (1)(D) of subsection (a) of this section shall be granted for a period longer than two years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a).

(d) (1) No manufacturer whose total motor vehicle production in its most recent year of production exceeds 10,000, as determined by the Secretary, shall be eligible to apply for an exemption under paragraph (1)(A) of subsection (a) of this section.

(2) No manufacturer shall be eligible to apply for exemption under paragraph (1)(B), (1)(C), or (1)(D) of subsection (a) of this section for more than 2,500 vehicles

to be sold in the United States in any 12 month period, as determined by the Secretary.

(e) Any manufacturer applying for an exemption on the basis of paragraph (1)(A) of subsection (a) of this section shall include in the application a complete financial statement showing the basis of the economic hardship and a complete description of its good faith efforts to comply with the standards. Any manufacturer applying for an exemption on the basis of paragraph (1)(B) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing the innovative nature of the safety features and a detailed analysis establishing that the level of safety of the new safety feature is equivalent to or exceeds the level of safety established in the standard from which the exemption is sought. Any manufacturer applying for an exemption on the basis of paragraph (1)(C) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing that the safety of such vehicle is not unreasonably degraded and that such vehicle is a low-emission motor vehicle. Any manufacturer applying for an exemption on the basis of paragraph (1)(D) of subsection (a) of this section shall include in the application a detailed analysis of how the vehicle provides an overall level of safety equivalent to or exceeding the overall level of safety of non-exempted motor vehicles.

(f) The Secretary shall promulgate regulations within 90 days (which time may be extended by the Secretary by a notice published in the Federal Register stating good cause therefor) after the date of the enactment of this subsection for applications for exemption from any motor vehicle safety standard provided for in this section. The Secretary may make public within 10 days of the date of filing an application under this section all information contained in such application or other information relevant thereto unless such information concerns or relates to a trade secret, or other confidential business information, not relevant to the application for exemption.

(g) For the purpose of this section, the term "low-emission motor vehicle" means any motor vehicle which—

(1) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 202 of the Clean Air Act (42 U.S.C. 1857f-1) at the time of manufacture to that type of vehicle; and

(2) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 202 of the Clean Air Act at the time of manufacture to that type of vehicle.

SEC. 124. (a) Any interested person may file with the Secretary a petition requesting him (1) to commence a

proceeding respecting the issuance of an order pursuant to section 103 or to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of this Act.

(b) Such petition shall set forth (1) facts which it is claimed establish that an order is necessary, and (2) a brief description of the substance of the order which it is claimed should be issued by the Secretary.

(c) The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

(d) Within 120 days after filing of a petition described in subsection (b), the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the proceeding requested in the petition. If the Secretary denies such petition he shall publish in the Federal Register his reasons for such denial.

(e) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

SEC. 125. (a) Not later than 60 days after the date of enactment of this section, the Secretary shall amend the Federal motor vehicle safety standard numbered 208 (49 CFR 571.208), so as to bring such standard into conformity with the requirements of paragraphs (1), (2), and (3) of subsection (b) of this section. Such amendment shall take effect not later than 120 days after the date of enactment of this section.

15 U.S.C.
1410b

(b) After the effective date of the amendment prescribed under subsection (a):

(1) No Federal motor vehicle safety standard may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of, any continuous buzzer designed to indicate that safety belts are not in use, or any safety belt interlock system.

(2) Except as otherwise provided in paragraph (3), no Federal motor vehicle safety standard respecting occupant restraint systems may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of, an occupant restraint system other than a belt system.

(3) (A) Paragraph (2) shall not apply to a Federal motor vehicle safety standard which provides that a manufacturer is permitted to comply with such standard by equipping motor vehicles manufactured by him with either—

(i) a belt system, or

(ii) any other occupant restraint system specified in such standard.

(B) Paragraph (2) shall not apply to any Federal motor vehicle safety standard which the Secretary elects to promulgate in accordance with the procedure specified in subsection (c), unless it is disapproved by both Houses of Congress by concurrent resolution in accordance with subsection (d).

(C) Paragraph (2) shall not apply to a Federal motor vehicle safety standard if at the time of promulgation of such standard (i) the 60-day period determined under subsection (d) has expired with respect to any previously promulgated standard which the Secretary has elected to promulgate in accordance with subsection (c), and (ii) both Houses of Congress have not by concurrent resolution within such period disapproved such previously promulgated standard.

(c) The procedure referred to in subsection (b) (3) (B) and (C) in accordance with which the Secretary may elect to promulgate a standard is as follows:

(1) The standard shall be promulgated in accordance with section 103 of this Act, subject to the other provisions of this subsection.

(2) Section 553 of title 5, United States Code, shall apply to such standard; except that the Secretary shall afford interested persons an opportunity for oral as well as written presentation of data, views, or arguments. A transcript shall be kept of any oral presentation.

(3) The chairmen and ranking minority members of the House Interstate and Foreign Commerce Committee and the Senate Commerce Committee shall be notified in writing of any proposed standard to which this section applies. Any Member of Congress may make an oral presentation of data, views, or arguments under paragraph (2).

(4) Any standard promulgated pursuant to this subsection shall be transmitted to both Houses of Congress, on the same day and to each House while it is in session. In addition, such standard shall be transmitted to the chairmen and ranking minority members of the committees referred to in paragraph (3).

(d) (1) A standard which the Secretary has elected to promulgate in accordance with subsection (c) shall not be effective if during the first period of 60 calendar days of continuous session of Congress after the date of transmittal to Congress, both Houses of Congress pass a concurrent resolution the matter after the resolving clause of which reads as follows: "The Congress disapproves the Federal motor vehicle safety standard transmitted to Congress on _____, 19____"; (the blank space being filled with date of transmittal of the standard to Con-

gress). If both Houses do not pass such a resolution during such period, such standard shall not be effective until the expiration of such period (unless the standard specifies a later date).

(2) For purposes of this section—

- (A) continuity of session of Congress is broken only by an adjournment sine die; and
- (B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(e) This section shall not impair any right which any person may have to obtain judicial review of a Federal motor vehicle safety standard.

(f) For purposes of this section:

(1) The term "safety belt interlock" means any system designed to prevent starting or operation of a motor vehicle if one or more occupants of such vehicle are not using safety belts.

(2) The term "belt system" means an occupant restraint system consisting of integrated lap and shoulder belts for front outboard occupants and lap belts for other occupants. With respect to (A) motor vehicles other than passenger vehicles, (B) convertibles, and (C) open-body type vehicles, such term also includes an occupant restraint system consisting of lap belts or lap belts combined with detachable shoulder belts.

(3) The term "occupant restraint system" means a system the principal purpose of which is to assure that occupants of a motor vehicle remain in their seats in the event of a collision or rollover. Such term does not include a warning device designed to indicate that seat belts are not in use.

(4) The term "continuous buzzer" means a buzzer other than a buzzer which operates only during the 8 second period after the ignition is turned to the "start" or "on" position.

PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

NOTIFICATION RESPECTING MANUFACTURER'S FINDING OF DEFECT OR FAILURE TO COMPLY

SEC. 151. If a manufacturer—

15 U.S.C. 1411

(1) obtains knowledge that any motor vehicle or item of replacement equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

(2) determines in good faith that such vehicle or item of replacement equipment does not comply with

an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act; he shall furnish notification to the Secretary and to owners, purchasers, and dealers, in accordance with section 153, and he shall remedy the defect or failure to comply in accordance with section 154.

NOTIFICATION RESPECTING SECRETARY'S FINDING OF DEFECT OR FAILURE TO COMPLY

15 U.S.C. 1412

SEC. 152. (a) If through testing, inspection, investigation, or research carried out pursuant to this Act, or examination of communications under section 158(a)(1), or otherwise, the Secretary determines that any motor vehicle or item of replacement equipment—

(1) does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 103 of this Act; or

(2) contains a defect which relates to motor vehicle safety;

he shall immediately notify the manufacturer of such motor vehicle or item of replacement equipment of such determination, and shall publish notice of such determination in the Federal Register. The notification to the manufacturer shall include all information upon which the determination of the Secretary is based. Such notification (including such information) shall be available to any interested person, subject to section 158(a)(2)(B). The Secretary shall afford such manufacturer an opportunity to present data, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety; and shall afford other interested persons an opportunity to present data, views, and arguments respecting the determination of the Secretary.

(b) If, after such presentations by the manufacturer and interested persons, the Secretary determines that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard, or contains a defect which relates to motor vehicle safety, the Secretary shall order the manufacturer (1) to furnish notification respecting such vehicle or item of replacement equipment to owners, purchasers, and dealers in accordance with section 153, and (2) to remedy such defect or failure to comply in accordance with section 154.

CONTENTS, TIME, AND FORM OF NOTICE

15 U.S.C. 1413

SEC. 153. (a) The notification required by section 151 or 152 respecting a defect in or failure to comply of a motor vehicle or item of replacement equipment shall contain, in

addition to such other matters as the Secretary may prescribe by regulation—

- (1) a clear description of such defect or failure to comply;
- (2) an evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply;
- (3) a statement of the measures to be taken to obtain remedy of such defect or failure to comply;
- (4) a statement that the manufacturer furnishing the notification will cause such defect or failure to comply to be remedied without charge pursuant to section 154;
- (5) the earliest date (specified in accordance with the second and third sentences of section 154(b)(2)) on which such defect or failure to comply will be remedied without charge and, in the case of tires, the period during which such defect or failure to comply will be remedied without charge pursuant to section 154; and
- (6) a description of the procedure to be followed by the recipient of the notification in informing the Secretary whenever a manufacturer, distributor, or dealer fails or is unable to remedy without charge such defect or failure to comply.

(b) The notification required by section 151 or 152 shall be furnished—

- (1) within a reasonable time after the manufacturer first makes a determination with respect to a defect or failure to comply under section 151; or
- (2) within a reasonable time (prescribed by the Secretary) after the manufacturer's receipt of notice of the Secretary's determination pursuant to section 152 that there is a defect or failure to comply.

(c) The notification required by section 151 or 152 with respect to a motor vehicle or item of replacement equipment shall be accomplished—

- (1) in the case of a motor vehicle, by first class mail to each person who is registered under State law as the owner of such vehicle and whose name and address is reasonably ascertainable by the manufacturer through State records or other sources available to him;
- (2) in the case of a motor vehicle, or tire, by first class mail to the first purchaser (or if a more recent purchaser is known to the manufacturer, to the most recent purchaser known to the manufacturer) of each such vehicle or tire containing such defect or failure to comply, unless the registered owner (if any) of such vehicle was notified under paragraph (1);
- (3) in the case of an item of replacement equipment (other than a tire), (A) by first class mail to the most recent purchaser known to the manufacturer; and (B) if the Secretary determines that it is necessary in

the interest of motor vehicle safety, by public notice in such manner as the Secretary may order after consultation with the manufacturer;

(4) by certified mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such motor vehicle or replacement equipment was delivered; and

(5) by certified mail to the Secretary, if section 151 applies.

In the case of a tire which contains a defect or failure to comply (or of a motor vehicle on which such tire was installed as original equipment), the manufacturer who is required to provide notification under paragraph (1) or (2) may elect to provide such notification by certified mail.

REMEDY OF DEFECT OR FAILURE TO COMPLY

15 U.S.C. 1414

SEC. 154. (a) (1) If notification is required under section 151 or by an order under section 152(b) with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, then the manufacturer of each such motor vehicle or item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or failure to comply in such motor vehicle or such item of replacement equipment to be remedied without charge. In the case of notification required by an order under section 152(b), the preceding sentence shall not apply during any period during which enforcement of the order has been restrained in an action to which section 155 (a) applies or if such order has been set aside in such an action.

(2) (A) In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer (subject to subsection (b) of this section) shall cause the vehicle to be remedied by whichever of the following means he elects:

(i) By repairing such vehicle.

(ii) By replacing such motor vehicle without charge with an identical or reasonably equivalent vehicle.

(iii) By refunding the purchase price of such motor vehicle in full, less a reasonable allowance for depreciation.

Replacement or refund may be subject to such conditions imposed by the manufacturer as the Secretary may permit by regulation.

(B) In the case of an item of replacement equipment the manufacturer shall (at his election) cause either the repair of such item of replacement equipment, or the replacement of such item of replacement equipment without

charge with an identical or reasonably equivalent item of replacement equipment.

(3) The dealer who effects remedy pursuant to this section without charge shall receive fair and equitable reimbursement for such remedy from the manufacturer.

(4) The requirement of this section that remedy be provided without charge shall not apply if the motor vehicle or item of replacement equipment was purchased by the first purchaser more than 8 calendar years (3 calendar years in the case of a tire, including an original equipment tire) before (A) notification respecting the defect or failure to comply is furnished pursuant to section 151, or (B) the Secretary orders such notification under section 152, whichever is earlier.

(5)(A) The manufacturer of a tire (including an original equipment tire) presented for remedy by an owner or purchaser pursuant to notification under section 153 shall not be obligated to remedy such tire if such tire is not presented for remedy during the 60-day period beginning on the later of (i) the date on which the owner or purchaser received such notification or (ii) if the manufacturer elects replacement, the date on which the owner or purchaser received notice that a replacement tire is available.

(B) If the manufacturer elects replacement and if a replacement tire is not in fact available during the 60-day period, then the limitation under subparagraph (A) on the manufacturer's remedy obligation shall be applicable only if the manufacturer provides a notification (subsequent to the notification provided under subparagraph (A)(ii)) that replacement tires are to be available during a later 60-day period (beginning after such subsequent notification), and in that case the manufacturer's obligation shall be limited to tires presented for remedy during the later 60-day period if the tires are in fact available during that period.

(b)(1) Whenever a manufacturer has elected under subsection (a) to cause the repair of a defect in a motor vehicle or item of replacement equipment or of a failure of such vehicle or item of replacement equipment to comply with a motor vehicle safety standard, and he has failed to cause such defect or failure to comply to be adequately repaired within a reasonable time, then (A) he shall cause the motor vehicle or item of replacement equipment to be replaced with an identical or reasonably equivalent vehicle or item of replacement equipment without charge, or (B) (in the case of a motor vehicle and if the manufacturer so elects) he shall cause the purchase price to be refunded in full, less a reasonable allowance for depreciation. Failure to adequately repair a motor vehicle or item of replacement equipment within 60 days after tender of the motor vehicle or item of replacement equipment for repair shall be prima facie evidence of failure to repair within a reasonable time;

unless prior to the exploration of such 60-day period the Secretary, by order, extends such 60-day period for good cause shown and published in the Federal Register.

(2) For purposes of this subsection, the term "tender" does not include presenting a motor vehicle or item of replacement equipment for repair prior to the earliest date specified in the notification pursuant to section 153(a) on which such defect or failure to comply will be remedied without charge, or (if notification was not afforded pursuant to section 153(a)) prior to the date specified in any notice required to be given under section 155(d). In either case, such date shall be specified by the manufacturer and shall be the earliest date on which parts and facilities can reasonably be expected to be available. Such date shall be subject to disapproval by the Secretary.

(c) The manufacturer shall file with the Secretary a copy of his program pursuant to this section for remedying any defect or failure to comply, and the Secretary shall make the program available to the public. Notice of such availability shall be published in the Federal Register.

ENFORCEMENT OF NOTIFICATION AND REMEDY ORDERS

15 U.S.C. 1415

SEC. 155. (a) (1) An action under section 110(a) to restrain a violation of an order issued under section 152(b), or under section 109 to collect a civil penalty with respect to a violation of such an order, or any other civil action with respect to such an order, may be brought only in the United States district court for the District of Columbia or the United States district court for a judicial district in the State of incorporation (if any) of the manufacturer to which the order applies; unless on motion of any party the court orders a change of venue to any other district court for good cause shown. All actions (including enforcement actions) brought with respect to the same order under section 152(b) shall be consolidated in an action in a single judicial district, in accordance with an order of the court in which the first such action is brought (or if such first action is transferred to another court, by order of such other court).

(2) The court shall expedite the disposition of any civil action to which this subsection applies.

(b) If a civil action which relates to an order under section 152(b), and to which subsection (a) of this section applies, has been commenced, the Secretary may order the manufacturer to issue a provisional notification which shall contain—

(A) a statement that the Secretary has determined that a defect which relates to motor vehicle safety, or failure to comply with a Federal motor vehicle safety standard, exists, and that the manufacturer is contesting such determination in a proceeding in a United States district court,

(B) a clear description of the Secretary's stated basis for his determination that there is such a defect or failure,

(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply,

(D) any measures which in the judgment of the Secretary are necessary to avoid an unreasonable hazard resulting from the defect or failure to comply.

(E) a statement that the manufacturer will cause such defect or failure to comply to be remedied without charge pursuant to section 154, but that this obligation of the manufacturer is conditioned on the outcome of the court proceeding, and

(F) such other matters as the Secretary may prescribe by regulation or in such order.

Issuance of notification under this subsection does not relieve the manufacturer of any liability for failing to issue notification required by an order under section 152(b).

(c) (1) If a manufacturer fails to notify owners or purchasers in accordance with section 153(c) within the period specified under section 153(b), the court may hold him liable for a civil penalty with respect to such failure to notify, unless the manufacturer prevails in an action described in subsection (a) of this section or unless the court in such an action restrains the enforcement of such order (in which case he shall not be liable with respect to any period for which the effectiveness of the order was stayed). The court shall restrain the enforcement of such an order only if it determines, (A) that the failure to furnish notification is reasonable, and (B) that the manufacturer has demonstrated that he is likely to prevail on the merits.

(2) If a manufacturer fails to notify owners or purchasers as required by an order under subsection (b) of this section, the court may hold him liable for a civil penalty without regard to whether or not he prevails in an action (to which subsection (a) applies) with respect to the validity of the order issued under section 152(b).

(d) If (i) a manufacturer fails within the period specified in section 153(b) to comply with an order under section 152(b) to afford notification to owners and purchasers, (ii) a civil action to which subsection (a) applies is commenced with respect to such order, and (iii) the Secretary prevails in such action, then the Secretary shall order the manufacturer—

(1) to afford notice (which notice may be combined with any notice required by an order under section 152(b)) to each owner, purchaser, and dealer described in section 153(c) of the outcome of the proceeding and containing such other information as the Secretary may require;

(2) to specify (in accordance with the second and third sentences of section 154(b) the earliest date on

which such defect or failure will be remedied without charge; and

(3) if notification was required under subsection (b) of this section, to reimburse such owner or purchaser for any reasonable any necessary expenses (not in excess of any amount specified in the order of the Secretary) which are incurred (A) by such owner or purchaser; (B) for the purpose of repairing the defect or failure to comply to which the order relates; and (C) during the period beginning on the date such notification under subsection (b) was required to be issued and ending on the date such owner or purchaser receives notification pursuant to this subsection.

REASONABLENESS OF NOTIFICATION AND REMEDY

15 U.S.C. 1416

SEC. 156. Upon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to notify under section 151 or 152, and to remedy a defect or failure to comply under section 154. If the Secretary determines the manufacturer has not reasonably met such obligation, he shall order the manufacturer to take specified action to comply with such obligation; and, in addition, the Secretary may take any other action authorized by this title.

EXEMPTION FOR INCONSEQUENTIAL DEFECT OR FAILURE TO COMPLY

15 U.S.C. 1417

SEC. 157. Upon application of a manufacturer, the Secretary shall exempt such manufacturer from any requirement under this part to give notice with respect to, or to remedy, a defect or failure to comply, if he determines, after notice in the Federal Register and opportunity for interested persons to present data, views, and arguments, that such defect or failure to comply is inconsequential as it relates to motor vehicle safety.

INFORMATION, DISCLOSURE, AND RECORDKEEPING

15 U.S.C. 1418

SEC. 158. (a) (1) Every manufacturer shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the dealers of such manufacturer or to owners or purchasers or motor vehicle or replacement equipment produced by such manufacturer regarding any defect or failure to comply in such vehicle or equipment which is sold or serviced.

(2) (A) Except as provided in subparagraph (B), the Secretary shall disclose to the public so much of any information which is obtained under this Act and which relates to a defect which relates to motor vehicle safety

or to a failure to comply with an applicable Federal motor vehicle safety standard, as he determines will assist in carrying out the purposes of this part or as may be required by section 152.

(B) Any information described in subparagraph (A) which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential for purposes of that section and shall not be disclosed; unless the Secretary determines that disclosure of such information is necessary to carry out the purposes of this title.

(C) Any obligation to disclose information under this paragraph shall be in addition to and not in lieu of the requirements of section 552 of title 5, United States Code.

(b) Every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each motor vehicle and tire produced by such manufacturer. To the extent required by regulations of the Secretary, every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each item of replacement equipment other than a tire produced by such manufacturer. The Secretary may, by rule, specify the records to be established and maintained, and reasonable procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection; except that the availability or not of such assistance shall not affect the obligation of manufacturers under this subsection. Such procedures shall be reasonable for the particular type of motor vehicle or tires for which they are prescribed, and shall provide reasonable assurance that customer lists of any dealer and distributor, and similar information, will not be made available to any person other than the dealer or distributor, except where necessary to carry out the purpose of this part.

DEFINITIONS

SEC. 159. For purposes of this part:

15 U.S.C. 1419

(1) The retreader of tires shall be deemed the manufacturer of tires which have been retreaded, and the brand name owner of tires marketed under a brand name not owned by the manufacturer of the tire shall be deemed the manufacturer of tires marketed under such brand name.

(2) Except as otherwise provided in regulations of the Secretary:

(A) The term "original equipment" means an item of motor vehicle equipment (including a

tire) which was installed in or on a motor vehicle at the time of its delivery to the first purchaser.

(B) The term "replacement equipment" means motor vehicle equipment (including a tire) other than original equipment.

(C) A defect in, or failure to comply of, an item of original equipment shall be deemed to be a defect in, or failure to comply of, the motor vehicle in or on which such equipment was installed at the time of its delivery to the first purchaser.

(D) If the manufacturer of a motor vehicle is not the manufacturer of original equipment installed in or on such vehicle at the time of its delivery to the first purchaser, the manufacturer of the vehicle (rather than the manufacturer of such equipment) shall be considered the manufacturer of such item of equipment.

(3) The term "first purchaser" means first purchaser for purposes other than resale.

(4) The term "adequate repair" does not include any repair which results in substantially impaired operation of a motor vehicle or item of replacement equipment.

EFFECT ON OTHER LAWS

15 U.S.C. 1420

SEC. 160. The provisions of this part shall not create or affect any warranty obligation under State or Federal law. Consumer remedies under this part are in addition to, and not in lieu of, any other right or remedy under State or Federal law.

TITLE II—TIRE SAFETY

SEC. 201. In all standards for pneumatic tires established under title I of this Act, the Secretary shall require that tires subject thereto be permanently and conspicuously labeled with such safety information as he determines to be necessary to carry out the purposes of this Act. Such labeling shall include—

15 U.S.C. 1421

(1) suitable identification of the manufacturer, or in the case of a retreaded tire suitable identification of the retreader, unless the tire contains a brand name other than the name of the manufacturer in which case it shall also contain a code mark which would permit the seller of such tire to identify the manufacturer thereof to the purchaser upon his request.

(2) the composition of the material used in the ply of the tire.

(3) the actual number of plies in the tire.

(4) the maximum permissible load for the tire.

(5) a recital that the tire conforms to Federal minimum safe performance standards, except that in lieu of such recital the Secretary may prescribe an appropriate mark or symbol for use by those manufacturers or retreaders who comply with such standards.

The Secretary may require that additional safety related information be disclosed to the purchaser of a tire at the time of sale of the tire.

SEC. 202. In standards established under title I of this Act the Secretary shall require that each motor vehicle be equipped by the manufacturer or by the purchaser thereof at the time of the first purchase thereof in good faith for purposes other than resale with tires which meet the maximum permissible load standards when such vehicle is fully loaded with the maximum number of passengers it is designed to carry and a reasonable amount of luggage.

15 U.S.C. 1422

SEC. 203. In order to assist the consumer to make an informed choice in the purchase of motor vehicle tires, within two years after the enactment of this title, the Secretary shall, through standards established under title I of this Act, prescribe by order, and publish in the Federal Register, a uniform quality grading system for motor vehicle tires. Such order shall specify the date such system is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest.

15 U.S.C. 1423

est, and publishes his reasons for such finding. The Secretary shall also cooperate with industry and the Federal Trade Commission to the maximum extent practicable in efforts to eliminate deceptive and confusing tire nomenclature and marketing practices.

15 U.S.C. 1424

SEC. 204. (a) No person shall sell, offer for sale, or introduction for sale, or deliver for introduction in interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved, except that the Secretary may by order permit the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of regrooved tires and motor vehicles equipped with regrooved tires which he finds are designed and constructed in a manner consistent with the purposes of this Act.

(b) Violations of this section shall be subject to civil penalties and injunction in accordance with sections 109 and 110 of this Act.

(c) For the purposes of this section the term "regrooved tire" means a tire on which a new tread has been produced by cutting into the tread of a worn tire.

15 U.S.C. 1425

SEC. 205. In the event of any conflict between the requirements of orders or regulations issued by the Secretary under this title and title I of this Act applicable to motor vehicle tires and orders or administrative interpretations issued by the Federal Trade Commission, the provisions of orders or regulations issued by the Secretary shall prevail.

15 U.S.C. 1426

SEC. 206. The Secretary shall, not later than one year after the date of enactment of this section, establish safety standards under title I of this Act setting limits on the age of tire carcasses which can be retreaded. Such standards shall establish varying age limits for such carcasses based on the extent to which the carcass was designed and constructed to be retreaded, the rate of deterioration of the materials in such tire, and such other factors as he determines necessary to carry out the purposes of this Act.

TITLE III—RESEARCH AND TEST FACILITIES

SEC. 301. (a) The Secretary of Transportation is authorized to plan, design, and construct (including the alteration of existing facilities) facilities suitable to conduct research, development, and compliance and other testing in traffic safety (including highway safety and motor vehicle safety), except that no appropriation shall be made for any such planning, designing, or construction involving an expenditure in excess of \$100,000 if such planning, designing, or construction has not been approved by resolutions adopted in substantially the same form by the Committees on Interstate and Foreign Commerce and on Public Works of the House of Representatives, and by the Committees on Commerce and on Public Works of the Senate. For the purpose of securing consideration of such approval the Secretary shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

15 U.S.C. 1431

- (1) a brief description of the facility to be planned, designed, or constructed;
- (2) the location of the facility, and an estimate of the maximum cost of the facility;
- (3) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and
- (4) a statement of justification of the need for such facility.

(b) The estimated maximum cost of any facility approved under this section as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Secretary, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this subsection exceed 10 per centum of such estimated maximum cost.

LEGISLATIVE HISTORY

House Reports : No. 1776 accompanying H.R. 13228 Committee on Interstate and Foreign Commerce) and No. 1919 (Committee of Conference).

Senate Report No. 1301 (Committee on Commerce).

Congressional Record, Vol. 119 (1966) :

June 24 : Considered and passed Senate.

Aug. 17 : Considered and passed House, amended, in lieu of H.R. 13228.

Aug. 18 : Senate disagreed to House amendments, asked for a conference.

Aug. 31 : Senate and House agreed to conference report.

REFRIGERATOR SAFETY ACT

(249)

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REFRIGERATOR SAFETY ACT

AN ACT To require certain safety devices on household refrigerators shipped in interstate commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after the date this section takes effect unless it is equipped with a device, enabling the door thereof to be opened from the inside, which conforms with standards prescribed pursuant to section 3.

SEC. 2. Any person who violates the first section of this Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both.

SEC. 3. The Secretary of Commerce shall prescribe and publish in the Federal Register commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this section shall be so prescribed and published not later than one year after the date of the enactment of this Act.

SEC. 4. As used in this Act, the term "interstate commerce" includes commerce between one State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico.

SEC. 5. This Act shall take effect on the date of its enactment, except that the first section of this Act shall take effect one year and 90 days after the date of publication of commercial standards first established under section 3 of this Act. In the event of a change in said commercial standards first established, a like period shall be allowed for compliance with said change in commercial standards.

APPENDIX

(A1)



ADMINISTRATIVE PROCEDURE

APPENDIX

TABLE OF CONTENTS

	Page
Administrative procedure provisions-----	A5
5 U.S.C., chapter 5, subchapter II.—Administrative procedure-----	A5
Section 551. Definitions -----	A5
Section 552. Public information ; agency rules, opinions, orders, records, and proceedings-----	A6
Section 552a. Records maintained on individuals-----	A11
Section 552b. Open meetings-----	A21
Section 553. Rulemaking -----	A26
Section 554. Adjudications -----	A27
Section 555. Ancillary matters-----	A28
Section 556. Hearings ; presiding employees ; powers and duties ; burden of proof ; evidence ; record as basis of decision-----	A29
Section 557. Initial decisions ; conclusiveness ; review by agency ; submissions by parties ; contents of decisions ; record-----	A30
Section 558. Imposition of sanctions ; determination of applications for licenses ; suspension, revocation, and expiration of licenses-----	A32
Section 559. Effect on other laws ; effect of subsequent statute-----	A32
5 U.S.C., chapter 7.—Judicial review-----	A32
Section 701. Application ; definitions-----	A32
Section 702. Right of review-----	A33
Section 703. Form and venue of proceeding-----	A33
Section 704. Actions reviewable-----	A34
Section 705. Relief pending review-----	A34
Section 706. Scope of review-----	A34
Hearing examiners. (5 U.S.C. 3105, 3344, 5362, and 7521)-----	A34
Section 3105. Appointment of hearing examiners-----	A34
Section 3344. Details ; hearing examiners-----	A35
Section 5362. Hearing examiners-----	A35
Section 7521. Removal -----	A35
Administrative practice-----	A37
5 U.S.C., chapter 5, subchapter I.—General provisions-----	A37
Section 500. Administrative practice ; general provisions-----	A37
Section 503. Witness fees and allowances-----	A38
Rulemaking authority ; delegation-----	A39
5 U.S.C. 301 and 302-----	A39
Section 301. Departmental regulations-----	A39
Section 302. Delegation of authority-----	A39
Selected provisions of title 28, United States Code, relating to judicial review-----	A41
28 U.S.C. 1254, 1331, 1391(e) and 2112-----	A41
Section 1254. Courts of appeals ; certiorari ; appeal ; certified questions-----	A41
Section 1331. Federal question ; amount in controversy ; costs-----	A41
Section 1391(e). Venue-----	A41
Section 2112. Record on review and enforcement of agency orders-----	A42

	Page
28 U.S.C., chapter 158.—Orders of Federal agencies; review-----	A43
Section 2341. Definitions-----	A43
Section 2342. Jurisdiction of court of appeals-----	A44
Section 2343. Venue-----	A44
Section 2344. Review of orders; time; notice; contents of petition; service-----	A44
Section 2345. Prehearing conference-----	A44
Section 2346. Certification of record on review-----	A45
Section 2347. Petitions to review; proceedings-----	A45
Section 2348. Representation in proceeding; intervention-----	A45
Section 2349. Jurisdiction of the proceeding-----	A46
Section 2350. Review in Supreme Court on certiorari or certification -----	A46
Section 2351. Enforcement of orders by district courts-----	A46
Cross reference tables (APA to title 5; title 5 to APA)-----	A47

ADMINISTRATIVE PROCEDURE PROVISIONS

Title 5, United States Code

Chapter 5.—ADMINISTRATIVE PROCEDURE

SUBCHAPTER II.—ADMINISTRATIVE PROCEDURE

§ 551. Definitions

For the purpose of this subchapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix;

(2) “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) “rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting or practices bearing on any of the foregoing;

(5) “rule making” means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) "agency action" includes the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acting arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disci-

plinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2) or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institution; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F) and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

§ 552a. Records maintained on individuals

(a) **DEFINITIONS.**—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or

instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) pursuant to the order of a court of competent jurisdiction.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his requests, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and, if after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENT.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

- (A) the name and location of the system;
- (B) the categories of individuals on whom records are maintained in the system;
- (C) the categories of records maintained in the system;
- (D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
- (E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
- (F) the title and business address of the agency official who is responsible for the system of records;
- (G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
- (H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and
- (I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section,

including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate, rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES.—Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the

qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2) (A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3) (A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by

the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i) (1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4)(A) through (F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) **SPECIFIC EXEMPTIONS.**—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of this section if the system of records is—

- (1) subject to the provisions of section 552(b) (1) of this title;
- (2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;
- (4) required by statute to be maintained and used solely as statistical records;
- (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l) (1) **ARCHIVAL RECORDS.**—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency

which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personnel or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

(q) EFFECT OF OTHER LAWS.—No agency shall rely on any exemp-

tion contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

§ 552b. Open meetings

(a) For purposes of this section—

(1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of any agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production

of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would—

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d) (1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion

to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (e), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of

the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f) (1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9) (A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of

subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h) (1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

§ 553. Rulemaking

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms of substance of the proposed rule or a description of the subject and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretative rules and statements of policy; or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

- (1) a matter subject to a subsequent trial of the law and the facts *de novo* in a court;
- (2) the selection or tenure of an employee, except a hearing examiner appointed under section 3105 of this title;
- (3) proceedings in which decisions rest solely on inspections, tests, or elections;
- (4) the conduct of military or foreign affairs functions;
- (5) cases in which an agency is acting as an agent for a court; or
- (6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

- (1) the time, place, and nature of the hearings;
- (2) the legal authority and jurisdiction under which the hearing is to be held; and
- (3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by the rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

- (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and
- (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of *ex parte* matters as authorized by law, such an employee may not—

- (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or
- (2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

- (A) in determining applications for initial licenses;
- (B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or
- (C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§ 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceedings. Except in affirming a prior denial or when the denial is self-explanatory, the

notice shall be accompanied by a brief statement of the grounds for denial.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

- (1) the agency;
- (2) one or more members of the body which comprises the agency; or
- (3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

- (1) administer oaths and affirmations;
- (2) issue subpoenas authorized by law;
- (3) rule on offers of proof and receive relevant evidence;
- (4) take depositions or have depositions taken when the ends of justice would be served;
- (5) regulate the course of the hearing;
- (6) hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) dispose of procedural requests or similar matters;
- (8) make or recommend decisions in accordance with section 557 of this title; and
- (9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct

such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and

tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

§ 559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5362, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to hearing examiners, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5362, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to hearing examiners, except to the extent that it does so expressly.

* * * * *

Chapter 7.—JUDICIAL REVIEW

§ 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;
- (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
- (F) courts martial and military commissions;
- (G) military authority exercised in the field in time of war or in occupied territory; or
- (H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

HEARING EXAMINERS (5 U.S.C. 3105, 3344, 5362, and 7521)

* * * * *

§ 3105. Appointment of hearing examiners

Each agency shall appoint as many hearing examiners as are necessary for proceedings required to be conducted in accordance with

sections 556 and 557 of this title. Hearing examiners shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as hearing examiners.

* * * * *

§ 3344. Details; hearing examiners

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with hearing examiners appointed under section 3105 of this title may use hearing examiners selected by the Civil Service Commission from and with the consent of other agencies.

* * * * *

§ 5362. Hearing examiners

Hearing examiners appointed under section 3105 of this title are entitled to pay prescribed by the Civil Service Commission independently of agency recommendations or ratings and in accordance with subchapter III of this chapter and chapter 51 of this title.

* * * * *

§ 7521. Removal

A hearing examiner appointed under section 3105 of this title may be removed by the agency in which he is employed only for good cause established and determined by the Civil Service Commission on the record after opportunity for hearing.

ADMINISTRATIVE PRACTICE

Title 5, United States Code

Chapter 5.—ADMINISTRATIVE PROCEDURE

SUBCHAPTER I.—GENERAL PROVISIONS

§ 500. Administrative practice; general provisions

- (a) For the purpose of this section—
 - (1) “agency” has the meaning given it by section 551 of this title; and
 - (2) “State” means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.
- (b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.
- (c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.
- (d) This section does not—
 - (1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;
 - (2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;
 - (3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or
 - (4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.
- (e) Subsections (b)–(d) of this section do not apply to practice before the Patent Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.
- (f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative

in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.

* * * * *

§ 503. Witness fees and allowances

(a) For the purpose of this section "agency" has the meaning given it by section 5721 of this title.

(b) A witness is entitled to the fees and allowances allowed by statute for witnesses in the courts of the United States when—

- (1) he is subpenaed under section 304(a) of this title; or
- (2) he is subpenaed to and appears at a hearing before an agency authorized by law to hold hearings and subpena witnesses to attend the hearings.

RULEMAKING AUTHORITY; DELEGATION

Title 5, United States Code

Chapter 3.—POWERS

Sec.

- 301. Departmental regulations.
- 302. Delegation of authority.
- 303. Oaths to witnesses.
- 304. Subpenas.
- 305. Systematic agency review of operations.

§ 301. Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

§ 302. Delegation of authority

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

(b) In addition to the authority to delegate conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him—

(1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency; and

(2) by section 3702 of title 44 to authorize the publication of advertisements, notices, or proposals.

(A39)

SELECTED JUDICIAL REVIEW PROVISIONS OF TITLE 28, U.S.C.

Sections 1254, 1331, 1391(e) and 2112 of Title 28, United States Code

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

* * * * *

§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States, except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

* * * * *

§ 1391. Venue generally

* * * * *

(e) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States,

or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (1) a defendant in the action resides, or (2) the cause of action arose, or (3) any real property involved in the action is situated, or (4) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

The summons and complaint in such an action shall be served as provided by the Federal Rules of Civil Procedure except that the delivery of the summons and complaint to the officer or agency as required by the rules may be made by certified mail beyond the territorial limits of the district in which the action is brought.

* * * * *

§ 2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules pre-

scribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

* * * * *

Chapter 158.—ORDERS OF FEDERAL AGENCIES; REVIEW

§ 2341. Definitions

As used in this chapter—

- (1) “clerk” means the clerk of the court in which the petition for the review of an order, reviewable under this chapter, is filed;
- (2) “petitioner” means the party or parties by whom a petition to review an order, reviewable under this chapter, is filed; and
- (3) “agency” means—

(A) the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, the Interstate Commerce Commission, or the Atomic Energy Commission, as the case may be;

(B) the Secretary, when the order was entered by the Secretary of Agriculture; and

(C) the Administration, when the order was entered by the Maritime Administration.

§ 2342. Jurisdiction of court of appeals

The court of appeals has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 23A of title 46 as are subject to judicial review under section 830 of title 46;

(4) all final orders of the Atomic Energy Commission made reviewable by section 2289 of title 42; and

(5) all rules, regulations, or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title. Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

§ 2343. Venue

The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

§ 2344. Review of orders; time; notice; contents of petition; service

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the Court of Appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

(1) the nature of the proceedings as to which review is sought;

(2) the facts on which venue is based;

(3) the grounds on which relief sought; and

(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

§ 2345. Prehearing conference

The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

§ 2346. Certification of record on review

Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

§ 2347. Petitions to review ; proceedings

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

2348. Representation in proceeding ; intervention

The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

§ 2349. Jurisdiction of the proceeding

(a) The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application. The hearing on an application for an interlocutory injunction shall be given preference and expedited and shall be heard at the earliest practicable date after the expiration of the notice of hearing on the application. On the final hearing of any proceeding to review any order under this chapter, the same requirements as to precedence and expedition apply.

§ 2350. Review in Supreme Court on certiorari or certification

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(3) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

§ 2351. Enforcement of orders by district courts

The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

CROSS REFERENCE TABLES

APA, Section	Title 5, Section
2	551, 701(b)(2)
3	552
4	553
5	554
6	555
7	556
8	557
9	558
10	701-706
11:	3105
1st sentence	7521
2d "	4301(2)(E), 5335(a)(B), 5362
3d "	3344
4th "	1305
5th "	559 (see also sec. 7(g) of Public Law 89-554
12	
Title 5, Section	APA, Section
551	2(a)
552	3
553	4
554	5
555	6
556	7
557	8
558	9
559	12
701	10
702	10(a)
703	10(b)
704	10(c)
705	10(d)
706	10(e)
3105	11:
3344	1st sentence
5362	4th "
7521	3d "
	2d "





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Federal Hazardous Substances**Fair Packaging and Labeling****Poison Prevention Packaging****Flammable Fabrics****Consumer Product Safety****Federal Caustic Poison****Magnuson-Moss Warranty—Federal Trade Commission Improvement****Federal Trade Commission****Motor Vehicle Information and Cost Savings****National Traffic and Motor Vehicle Safety****Refrigerator Safety****APPENDIX**

To use this index, bend the publication over and locate the desired section by following the black markers.